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Vol. II

TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1940

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No. 387

PHELPS DODGE CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

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No. 641

NATIONAL LABOR RELATIONS BOARD,  
PETITIONER,

vs.

PHELPS DODGE CORPORATION

---

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT

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PETITIONS FOR CERTIORARI FILED { AUGUST 30, 1940.  
{ DECEMBER 21, 1940.

CERTIORARI GRANTED JANUARY 13, 1941.

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1-b	CHARGE sworn to May 25, 1937, and filed with the Board by International Union of Mine, Mill and Smelter Workers, Local No. 30 .....	47	4
1-c	Page 2 of AMENDED CHARGE sworn to December 18, 1937, and filed with the Board by International Union of Mine, Mill and Smelter Workers, Local No. 30 .....	47	6
1-d	Page 1 of AMENDED CHARGE sworn to December 18, 1937, and filed with the Board by International Union of Mine, Mill and Smelter Workers, Local No. 30 .....	47	8
1-d(2)	AFFIDAVIT by Rose E. Lombardo, sworn to January 5, 1938, of service of subpoena duces tecum on Mr. H. C. Henrie by registered mail .....	47	•
1-e	COMPLAINT AND NOTICE OF HEARING issued by the Board, dated January 10, 1938 .....	47	10
	Appendix "A" attached to complaint—list of individuals whom, it is alleged in the complaint, Phelps Dodge Corporation, the respondent Corporation (petitioner herein), has refused to reinstate .....	47	27
1-f	AFFIDAVIT by Rose E. Lombardo, sworn to January 19, 1938, of service of Board's Exhibit No. 1-g by registered mail on the Copper Queen Branch of the respondent Corporation and on International Union of Mine, Mill and Smelter Workers, Local No. 30 .....	47	•
1-g	ORDER by Towne Nylander, Regional Director of the Board, 21st Region, dated January 19, 1938, extending the respondent Corporation's time to answer .....	47	•

\* By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, various of the exhibits are not printed, but shall be deemed part of the record before this Court and may be considered by this Court and referred to by the parties.



**Board's Exhibits**

**Exhibit  
No.**

**Admitted Printed  
at Page at Page**

1-h	AFFIDAVIT by Lucile R. Chinnici, sworn to January 11, 1938, of service of complaint, amended charge, notice of hearing and Rules and Regulations by registered mail on International Union of Mine, Mill and Smelter Workers, Local No. 30, on the Copper Queen Branch and the New York office of the respondent Corporation, on the Employees' Association, Phelps Dodge Corporation, Copper Queen Branch, Mines Division, Bisbee, Arizona, and on Denison Kitchel .....	47	•
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1-i	UNITED STATES POST OFFICE RETURN RECEIPTS re Board's Exhibit No. 1-f .....	47	•
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1-k	MOTION by the respondent Corporation to dismiss the complaint .....	47	42
1	Copy of ORDER dated January 25, 1938, designating Thomas H. Kennedy as Trial Examiner, and certification by Nathan Witt, Secretary of the Board, dated January 25, 1938, of said copy .....	81	•
2	Copy of ANALYSIS OF STRIKES in February, 1937, prepared by Division of Industrial Relations of the United States Department of Labor .....	48	•
3	Copy of various parts of REGISTRATION STATEMENT filed by the respondent Corporation with the Securities and Exchange Commission on May 11, 1937, and various parts of amendment thereto filed on May 25, 1937 .....	51	•
5	STIPULATION between attorney for the Board and attorneys for the respondent Corporation as to facts .....	53	614

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6	Copy of ANNUAL REPORT of the respondent Corporation for 1935 .....	82	*
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8	SERVICE RECORD CARD of Tom Abedin .....	90	621**
10	SERVICE RECORD CARD of William Day .....	140	621**
11	LIST of names and dates with respect to persons employed or re-employed by the respondent Corporation since June 10, 1935 (offered for identification only, and returned to counsel for the Board) .....	147	*
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17	SERVICE RECORD CARD of John Foley .....	208	624**
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19	SERVICE RECORD CARD of Paul Amaro .....	219	625**
20	SERVICE RECORD CARD of Wilford David Mortenson .....	229	625**
21	SERVICE RECORD CARD of Anson Perry Windsor ..	237	626**
22	SERVICE RECORD CARD of E. A. Curtis .....	244	626**
23	SERVICE RECORD CARD of William Dougherty ....	250	627**
24	LETTER dated February 10, 1934, from M. A. Bateman, Employment Agent of the respondent Corporation, to Mr. Tom Abedin .....	254	628

\* By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, various of the exhibits are not printed, but shall be deemed part of the record before this Court and may be considered by this Court and referred to by the parties.

\*\* By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, the bottom half of the front side, and the entire rear side, of each Service Record Card are not printed.

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27	SERVICE RECORD CARD of Vernon Curtis .....	281	630**
28	SERVICE RECORD CARD of Grover Cornett .....	287	630**
29	SERVICE RECORD CARD of Martin Vaclav .....	291	631**
30	SERVICE RECORD CARD of Montague L. Reed .....	299	631**
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32	SERVICE RECORD CARD of Milton Lewis Wynn ....	315	632**
33	SERVICE RECORD CARD of Alek Kalastro .....	321	633**
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45	SERVICE RECORD CARD of Pete D. Caretto .....	400	639**
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47	SERVICE RECORD CARD of Philities C. Lytle .....	413	640**
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\*\* By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, the bottom half of the front side, and the entire rear side, of each Service Record Card are not printed.



*Board's Exhibits.*

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56	SERVICE RECORD CARD of George C. Rohrer .....	479	644**
57	Copy of LETTER dated June 10, 1935, from the Vice-President and General Manager of the respondent Corporation to Mr. Louis S. Cates, President of the respondent Corporation .....	595	645
58	Copy of TELEGRAM dated June 10, 1935, from P. G. Beckett to L. S. Cates, President of the respondent Corporation .....	597	647
59	Copy of LETTER dated August 6, 1935, from the Vice-President and General Manager of the respondent Corporation to Mr. Louis S. Cates .....	598	648
60	Copy of LETTER dated August 13, 1935, from P. G. Beckett, Vice-President and General Manager of the respondent Corporation, to Mr. L. S. Cates, President of the respondent Corporation, and copy of LETTER dated August 10, 1935, from H. C. Henrie to Mr. P. G. Beckett enclosed therein ....	599	649
61	Copy of LETTER dated August 27, 1935, from P. G. Beckett, Vice-President and General Manager of the respondent Corporation, to Mr. Louis S. Cates, President of the respondent Corporation, and copy of LETTER dated August 24, 1935, from H. C. Henrie, Assistant General Superintendent of the respondent Corporation, to Mr. P. G. Beckett enclosed therein .....	600	656
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62	Copy of LETTER dated July 14, 1937, from the General Manager of the respondent Corporation, to Mr. L. S. Cates, President of the respondent Corporation, and copy of LETTER dated July 17, 1937, from the General Manager to Mr. L. S. Cates .....	600	660

\*\* By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, the bottom half of the front side, and the entire rear side, of each Service Record Card are not printed.

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63	Copy of LETTER dated June 25, 1935, from the Vice-President and General Manager of the respondent Corporation, to Mr. Louis S. Cates, President of the respondent Corporation .....	602	662
64	Copy of LETTER dated June 11, 1935, from P. G. Beckett, Vice-President and General Manager of the respondent Corporation, to Mr. Louis S. Cates, President of the respondent Corporation, and copy of LETTER dated June 10, 1935, from H. C. Henrie to Mr. P. G. Beckett enclosed therein .....	602	665
65	Copies of two TELEGRAMS both dated August 25, 1935, one from P. G. Beckett to L. S. Cates, President of the respondent Corporation, and one from J. H. Davis to P. G. Beckett .....	603	669
66	Copy of LETTER dated June 5, 1937, from H. C. Henrie to Mr. H. M. Lavender, General Manager of the respondent Corporation .....	603	670
67	Copy of LETTER dated June 15, 1937, from the General Manager of the respondent Corporation to Mr. L. S. Cates, President of the respondent Corporation, and copy of LETTER dated June 11, 1937, from H. C. Henrie to Mr. H. M. Lavender, General Manager of the respondent Corporation enclosed therein .....	604	672

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*H. D. Edge—For National Labor Relations Board—Direct.*

H. D. Edge, called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your name, please?

The Witness: H. D. Edge.

Trial Examiner Kennedy: What is your name, please?

The Witness: H. D. Edge.

*Direct examination:*

Q. (By Mr. Persinger) Mr. Edge, were you formerly employed by the Phelps Dodge Corporation? A. I was.

Q. When were you first employed by them? A. In January, 1924.

Q. And how long did you work after that? A. I worked until June, 1935.

Q. You had no layoffs during that time? A. No—well, I was off on one 30-day vacation, but I wasn't laid off.

Q. What job did you have when you started? A. I was mucker when I started.

Q. And what job did you have in June, 1935? A. Miner.

Q. At \$5.00 a day? A. Yes.

Q. At that time, in June, 1935, were you a member of the Union? A. I was.

Q. Did you go out on strike with the Union? A. I did.

Q. Were you on the picket line? A. Yes.

Q. After the strike was over, did you apply for reinstatement with the company? A. Not until last year, October of last year.

Q. October of 1937? A. 1937.

Q. Why did you wait so long to apply? A. Well, I figured there wasn't any use to apply. There had been several applied, and they hadn't gotten on.

*H. D. Edge—For National Labor Relations Board—Direct.*

Q. Do you have a brother who went out on strike? A. Yes, sir.

Q. Who was that? A. Jesse Edge.

Q. Do you know that he applied? A. No, sir; I don't.

Q. But a number of your friends have? A. A number of them, yes.

Q. Who were on the picket line with you? A. Yes.

Q. Have you applied since October of 1937? A. No, I haven't.

Q. To whom did you apply on October, 1937? A. Joe Berlindis.

Q. Where did you see him? A. In the office, the employment office.

Q. What time of day was it? A. It must have been around 9:00 o'clock.

Q. In the morning? A. In the morning.

Q. And did you see him in his private office? A. Yes, sir.

Q. Was anyone else present? A. Not right in the office; there was some out in the outer office.

Q. What was said on that occasion? A. Well, I went in and asked him what was the chance for a miner to go to work, and he asked me if I had ever worked for the company before, and I told him I had, and he asked me when, and I told him, and he told me then that he wasn't employing anyone at that time.

Mr. Persinger: I offer in evidence as Board's Exhibit 54, the employment record of this witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 54.)

Mr. Persinger: The witness with you.



*H. D. Edge—For National Labor Relations Board—Cross.*

*Cross examination:*

Q. (By Mr. Kitchel) Where do you live, Mr. Edge?

A. At the present time, I live between Coolidge and Florence.

Q. Is that called the Casa Grande district? A. Yes, it is called the Casa Grande.

Q. Are you engaged in farming up there? A. Well, I am working on a W. P. A. project at the present time.

Q. Do you have property of your own up there? A. No.

Q. How long have you been there? A. I moved up there just before Christmas.

Q. Just before Christmas of last year? A. Of last year, yes.

Q. Have you been an employee of the Phelps Dodge Corporation at any time since June 10, 1935? A. No.

Q. And you say that you are working on the W. P. A. at the present time in the Florence-Coolidge district? A. At the present time, yes, in Pinal County.

Q. How often were you in the picket line during the course of time that the picket line was established? A. Oh, I wasn't there all the time, but I was there some of the time.

Q. When was the last day that you were in the picket line? A. I don't just remember the last day that I was there. I was working on W. P. A. and I don't just remember. When I was working I couldn't get in the picket line.

Q. And how long did you continue on relief work after the picket line quit? A. Well, it was—I believe in April that I got a job with the Tempe Stone Company. I am not sure about that.

Q. About April, 1936? A. About April, to the best of my remembrance, it was in April.

Q. And that was the Phoenix-Tempe Stone Company? A. Yes.

Q. How long did you work for them? A. About five weeks, I believe.

*H. D. Edge—For National Labor Relations Board—Cross.*

Q. What was your rate of pay with them, Mr. Edge? A. Fifty cents an hour.

Q. How many hours a day? A. We was only allowed 40 hours a week.

Q. Forty hours a week? A. Yes.

Q. You say you worked for them for five weeks? A. About five weeks, I think.

Q. What was your next job after that? A. Well, the next job that I had after that was in Climax, Colorado.

Q. When did you go to Climax, Colorado? A. It was in June of 1936.

Q. Did you have any employment between the time you left the Phoenix-Tempe Stone Company and the time you got to Climax? A. Nothing, only I worked probably one period on W. P. A. here on relief.

Q. For whom did you go to work at Climax, Colorado? A. The Molybdenum Mining Company.

Q. Did you go to work as a miner? A. Yes.

Q. What was your rate of pay when you started with them? A. \$5.

Q. How many days a week? A. Six days.

Q. How long did you work for that company? A. Eleven shifts.

Q. Eleven shifts? A. Yes.

Q. Were you laid off at the end of that time? A. I quit.

Q. Where did you go from there? A. I went from there into Idaho.

Q. Whereabouts in Idaho? A. At Wallace.

Q. Did you go to work for the Sunshine Mining Company? A. No. I got a job and got turned down on doctor's examination.

Q. By the Sunshine Mining Company? A. Yes.

Q. Was any reason given by the company for the fact that you were rejected by the doctor? A. Said I had too much dust on my lungs.

Q. Is that what they call 'silicosis'? A. Yes.

*H. D. Edge—For National Labor Relations Board—Cross.*

**Trial Examiner Kennedy:** Speak out, please. The answer has to go in the record.

**The Witness:** Yes.

**Q.** (By Mr. Kitchel) That would be some time in June of 1936? **A.** No, that was in July, 1936.

**Q.** Then what did you do, Mr. Edge? **A.** I come back here.

**Q.** And you got back here in July or August of 1936? **A.** In August, I believe it was.

**Q.** Did you obtain a job when you returned? **A.** Well, I went back on W. P. A. when I first come back here.

**Q.** How long did you stay on W. P. A. when you returned? **A.** I stayed on W. P. A. until October 16th, I believe it was.

**Q.** October what? **A.** October, '36.

**Q.** And then did you obtain a job? **A.** I did.

**Q.** With whom? **A.** Joe Colford, leaser over here.

**Q.** What lease is Joe Colford operating? **A.** The "Uncle Sam", I believe it is called.

**Q.** And that was in October, 1936? **A.** Yes.

**Q.** How long did you work for him? **A.** I worked until 28th of April, 1937, and got hurt.

**Q.** What were you employed as at the Colford, a miner? **A.** A miner.

**Q.** What was your pay? **A.** At the time that I were hurt it was six—I don't remember just what it was, but it was around \$6; maybe a little more, or maybe a little bit under that.

**Q.** How many days a week? **A.** We was working six days.

**Q.** When you first started with Mr. Colford do you remember what your rate was? **A.** \$5, I believe, when I first started.

**Q.** Were you working six days a week at the time you started? **A.** Yes, sir.



*H. D. Edge—For National Labor Relations Board—Cross.*

Q. Were you employed continuously by Mr. Colford from October, 1936, until April, 1937? A. Yes, sir.

Q. And then I believe you stated that you were injured. How long did you lay off? A. I was off until the 1st of September, 1937.

Q. Did you receive compensation during that period? A. I did.

Q. You then returned to work for Mr. Colford? A. Yes, sir.

Q. Are you working for him at the present time? A. No, sir; I only worked four shifts.

Q. You worked four shifts when you went back in September of 1937? A. Yes, sir.

Q. Were you laid off at that time? A. Yes, sir.

Q. Did you obtain a job after that? A. No, nothing, only with W. P. A.

Q. You have been on nothing but W. P. A. work since that time? A. Since that time.

Q. Have you at any time made application to the Shattuck Denn for employment? A. I did.

Q. Were you able to obtain employment? A. No.

Q. What was the reason? A. Well, I don't know. He just didn't give me a job.

Q. Were you ever examined by the Shattuck Denn doctor? A. No, sir.

Q. Where is your family now, Mr. Edge? A. They are out at Coolidge—between Coolidge and Florence.

Q. They are all living up there with you? A. Yes.

Q. When did you get back to the district? A. Last night.

Mr. Kitchel: I believe that is all, Mr. Examiner.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: I have nothing further.

*Examination by the Trial Examiner:*

Q. (By Trial Examiner Kennedy) What job did you hold at Phelps Dodge when you went on strike? A. Miner.

*Ben H. Stringer—For National Labor Relations Board—  
Direct.*

Q. Do you want that job back? A. Well, I would like to have it back, yes.

Q. Do you feel that your physical condition is such that you could do the work? A. I do.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Mr. Stringer.

BEN H. STRINGER, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name?

The Witness: Stringer, Ben H.

*Direct examination:*

Q. (By Mr. Persinger) Mr. Stringer, were you formerly employed at the Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed there? A. In '35, '34 and '35; part of '34 and part of '35.

Q. When did you leave your employment there? A. I think it was on the 10th of June, the best I can remember.

Q. That was at the time of the strike? A. Yes, sir.

Q. How long had you been continuously employed by Phelps Dodge before the strike? A. One year.

Q. One year? A. Yes.

Q. What job did you start in at? A. Mucker.

Q. What job did you have just before the strike? A. I was mucking, with miner's pay.

**Ben H. Stringer—For National Labor Relations Board—  
Direct.**

Q. Did you go out on strike? A. Yes, sir.

Q. Were you a member of the Union at the time of the strike? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. Did you apply for reinstatement at any time while you were on the picket line? A. No, sir; I didn't.

Q. After the strike was over did you apply for reinstatement? A. Yes, sir.

Q. When? A. It was right at the last of August, or—between the last of August and the first of September—I mean, the 15th of September.

Q. That was in 1935? A. 1935.

Q. To whom did you apply? A. Bateman.

Q. Where? A. At the employment office.

Q. What time of day was it? A. The best I can remember, it was along about 9:00 or 10:00 o'clock.

Q. In the morning? A. In the morning.

Q. Did you go into Mr. Bateman's private office? A. Yes.

Q. Was anyone else in there? A. Not that I can recall.

Q. What did you say to Mr. Bateman? A. I asked him if I could—if there was any chance of us going back to work, for me to get another job, and he says, "No". He says, "No chance".

Q. Anything else said? A. And then he made the statement, he says, "Unless you get right with the church—with your church," he said.

Q. "Unless you get right with your church"? A. "With your church," yes.

Q. Have you applied at any time since then? A. Yes.

Q. When? A. In this last month; I don't remember the date.

Q. Last month? A. This last month.

Q. January? A. Well, no; it was in December.

Q. In December? A. Yes, December.



*Ben H. Stringer—For National Labor Relations Board—  
Cross.*

Q. Of 1937? A. 1937.

Q. And to whom did you apply? A. I don't know what the employment agent's name is there now.

Q. Was it Mr. Berlindas? A. Who?

Q. Berlindas? A. I don't know whether that is his name or not.

Q. Did you apply at the employment office of the company? A. Yes, sir.

Q. About what time of day was that? A. About 8:30.

Q. Was there anyone there except you and the employment manager? A. Not that I remember.

Q. And what was said on that occasion? A. He says, "Well," he says, "I am sorry; I can't do anything for you," but he says, "We are laying off a bunch of men," and he says, "Maybe after the first of the year we might do something; I don't know."

Q. Anything else said? A. That is all that was said.

Mr. Persinger: I offer as Board's Exhibit 55, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 55.)

Mr. Persinger: Take the witness.

*Cross examination:*

Q. (By Mr. Kitchel) Didn't Mr. Berlindas tell you, that is, the employment agent, whoever he was, in December, 1937, Mr. Stringer, that he was not hiring anybody? A. Well, that is what he said, he wasn't hiring nobody now, and they was laying off a bunch of men, and for me to come back after the first of the year, and he says, "Maybe there'll be something; I don't know."

*Ben H. Stringer—For National Labor Relations Board—  
Cross.*

Q. Have you been back? A. No, I haven't been back.

Q. Where did you live during the strike? A. I lived in Warren part of the time, at Peterson's place, Peterson's house up in Warren.

Q. Where did you live the rest of the time? A. The rest of the time I lived down here on the Cochise Road, Maxwell Hill.

Q. Were you in the picket line every day? A. No, not every day.

Q. Were you on relief during the time the picket line was established? A. Part of the time I was, yes. I was on relief practically all the time then after we came out on strike.

Q. What was the last day that you were in the picket line that you remember? A. Along about the 22nd.

Q. What month? A. August.

Q. August, 1935? A. Yes.

Q. Are you an employee of the Phelps Dodge Corporation at the present time? A. No, I am not.

Q. How long did you stay on relief work after you walked out on June 10, 1935? A. I am still on it.

Q. You have been on relief ever since? A. Practically ever since. I worked 18 days at the Denn, and outside of that I have been on relief ever since.

Q. When did you go to work for the Shattuck Denn Mining Company? A. I don't remember the date.

Q. What year? A. '35—'36; it was in '36.

Q. What time of the year? A. It was along—I don't know what date it was.

Q. Well, was it the latter part of the year or the first part of the year? A. It was in the fore part of the year.

Q. What? A. It was in the fore part of the year, along about the middle; I think it was along through April or May, somewhere along in there.



*Ben H. Stringer—For National Labor Relations Board—  
Cross.*

Q. In the spring of 1936 you went to work for the Shattuck Denn? A. I think that is when it was.

Q. And how long did you say you worked for them? A. 18 days.

Q. What job did you have with the Shattuck Denn? A. Mucking.

Q. At what rate of pay? A. Miner's.

Q. And what was that rate at that time? A. I don't remember.

Q. Was it in excess of \$5.00 a day? A. Yes, it was \$5.00 or better.

Q. How much better? A. Well, I don't know how much better. I do know it was \$5.00 and a little over; I don't remember the exact amount.

Q. Why did you quit that job? A. By request of the boss.

Q. You mean you were discharged? A. I was discharged.

Q. Did he request you to leave, or did he fire you? A. He fired me, and went up with me to be sure that I got on top.

Q. That is the only job you have had? A. That is the only one I have had.

Q. During this period? A. Yes, sir.

Q. Have you left the district at any time to seek employment? A. No, sir.

Q. At any of these other mines? A. No, sir.

Q. I didn't get your answer back there. What was the reason for your discharge? A. The reason for my discharge was because I pulled the air plug out of the air hose to get more air, and he come through and give me my choice. I could either put it in or go on top, and I just politely and firmly released the thing and asked him, I said, "Now, listen, let's have a little reasoning about this. I can't stay

*Ben H. Stringer—For National Labor Relations Board—  
Cross.*

here and work in this place without a little air, and I've got to have it or I can't stay here," and he says, "You can either put it in or go on top." I said, "You can do what you want. I can stay here and work with the plug out, or you can send me on top. I won't go on top of my own free will."

Q. Was anybody working with you at that time? A. I don't know what the mucker's name was that was with me.

Q. Did he get discharged? A. No. He came out to the station with me, but they sent him back.

Q. Have you ever been back to apply for employment at the Shattuck Denn? A. Yes, sir.

Q. When was that? A. Well, I went back last year. I don't know what time of the year it was. I went back there several trips and tried to get back on, but I never did make the rifle.

Q. Just once in 1937 you went back? A. No, I went back several different times. I don't know how many times, six or eight times.

Q. And each time did you see the employment agent? A. Well, if he was there, I seen him. I seen him, of course, several times. Sometimes he wasn't there.

Q. Did he tell you why he wouldn't hire you? A. No, he never did tell me why.

Q. Are you on relief at the present time? A. Yes, sir. W. P. A.

Q. In what shaft were you working at the time you walked out on June 10, 1935? A. C. & A.

Q. The Campbell shaft? A. C. & A., Junction shaft.

Q. Junction shaft? A. Yes, sir.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: I have one or two questions.

*Ben H. Stringer—For National Labor Relations Board—  
Redirect.*

*Redirect examination:*

Q. (By Mr. Persinger) I will show the witness a piece of metal and ask him what it is. A. That is the plug, one of the plugs that was taken out of the hose, the one I taken out.

Mr. Persinger: I merely want it to be noted that the plug itself is about three-quarters of an inch in diameter, and that the hole in the plug is about 1/16th of an inch in diameter, so it would make considerable difference whether the plug was in or out.

Mr. Kitchel: Are you offering that in evidence?

Mr. Persinger: I can't very well offer it in evidence. I am merely reading into the record the description of the plug.

Mr. Kitchel: I move that that be stricken from the record. I can't see what that has to do with this case.

Trial Examiner Kennedy: It may go out. Anything further?

Mr. Persinger: Nothing further.

*Examination by the Trial Examiner:*

Q. (By Trial Examiner Kennedy) Do you want your old job back at Phelps Dodge? A. Why, yes, I would take it back if I could get it.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Mr. Rohrer.



*George C. Rohrer—For National Labor Relations Board—  
Direct.*

GEORGE C. ROHRER, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: George C. Rohrer.

*Direct examination:*

Q. (By Mr. Persinger) Mr. Rohrer, were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. When did you start work there? A. I started for the C. & A. in 1928, and remained through the merger.

Q. How long did you continue to work for Phelps Dodge? A. June 10th.

Q. What year? A. '35.

Q. What was your job when you started? A. Mucker.

Q. What was your job in June, '35? A. Motorman.

Q. Motorman? A. Yes, sir.

Q. At what rate of pay? A. \$5.24, I believe.

Q. In June, 1935, were you a member of the union? A. Yes, sir.

Q. Did you go out on strike? A. I did.

Q. Were you on the picket line? A. Yes, sir.

Q. After the strike was over did you apply for reinstatement? A. Yes.

Q. When? A. About two weeks after the strike, I should say.

Q. To whom did you apply? A. Mr. Bateman.

Q. What time of day was it? A. About 9:00 o'clock in the morning.

Q. Where was it? A. At Mr. Bateman's office.

Q. Was anyone else in his office? A. I seen no one but Mr. Bateman.

Q. What did you say to Mr. Bateman? A. I asked him how about a job.



*George C. Rohrer—For National Labor Relations Board—  
Cross.*

Q. What did he say? A. He said, "No, I can't give you a job."

Q. Was anything else said? A. No, sir.

Mr. Persinger: I will offer in evidence as Board's Exhibit No. 56 the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 56.)

Mr. Persinger: Take the witness.

*Cross examination:*

Q. (By Mr. Kitchel) Are you employed at the present time, Mr. Rohrer? A. On the W. P. A.

Q. Where do you live at the present time? A. In Sulphur Springs Valley.

Q. You are working in the Valley on W. P. A. work? A. No, in Warren.

Q. Since the time which you have referred on your direct examination as two weeks after the end of the strike, have you ever made application for employment with the Phelps Dodge Corporation? A. No, sir.

Q. Were you on relief all during the time that the picket line was established? A. Yes, sir.

Q. How long did you continue on relief at that time? A. Until the W. P. A. started.

Q. Well, that was relief work, too, was it not? A. Yes, sir.

Q. Did you obtain any employment other than relief work during the year 1935? A. No, sir, unless it was just

*George C. Rohrer—For National Labor Relations Board—  
Cross.*

a job for a day or two now, and probably three or four days a month; something like that.

Q. What kind of jobs? A. Farm work.

Q. Farm work? A. Yes, sir.

Q. In Sulphur Springs Valley? A. Yes, sir.

Q. In 1936 did you obtain any employment? A. Only just a day now and then.

Q. And the rest of the time you were on relief? A. Yes, sir.

Q. The same is true of 1937? A. Yes, sir.

Q. Did you ever make application for employment with the Shattuck Denn Mining Company? A. I never did.

Q. Were you anxious to work in the mining game again? A. Yes, I would like to have a job at mining.

Q. Didn't you know that a lot of your associates here had gone to work at the Shattuck Denn? A. Yes, sir.

Q. How did it happen that you did not make an application there? A. Well, they had to rustle so long, for one thing, and I was up there several times, but none of them got jobs.

Q. None of them got jobs? A. While I were there; no, sir.

Q. How often were you there? A. Possibly three times.

Q. In the rustling line? A. Yes, sir.

Q. But you know, as a matter of fact, that a great many of them did get employment, do you not? A. Yes, sir.

Q. Do you own property in the Sulphur Springs Valley? A. Yes, sir.

Q. What is the nature of that property? A. Five acres of ground and a house.

Q. Did you do any farming on it, or do you do any farming on it? A. No, sir.

Q. Have you ever sought employment at any of the other mines around this part of the country? A. No, sir.

Q. You have not really made any great effort to get work, have you? A. Outside of the Phelps Dodge, no.

*Motion to Dismiss.*

Q. And that was in 1935, probably in September? A. Yes, sir.

Q. Are you satisfied with relief work? A. No, sir.

Q. Why haven't you applied for employment? A. Well, I never thought there was any chance to get it.

Q. You knew there was a chance to get it at Shattuck Denn, did you not? A. No, sir.

Q. Yet you knew all these men had gone to work there? A. Some of them.

Mr. Kitchel: I believe that is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

*Examination by the Trial Examiner:*

Q. (By Trial Examiner Kennedy) Have you ever been in the Shattuck Denn Mine? A. No, sir; I never was.

Q. Do you know what the conditions are there by reputation? A. I have heard that they was awfully hot.

Q. Did that have anything to do with your wanting to go to work there? A. No.

Q. Do you want your old job back at Phelps Dodge? A. Yes, sir.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: If the Examiner please, the Board moves to dismiss the complaint as to Bert Bethel, T. N. Curtis and McKelvey.

Trial Examiner Kennedy: What was the first name, please?

Mr. Persinger: Bert Bethel.

Trial Examiner Kennedy: How do you spell it?

Mr. Persinger: B-e-t-h-e-l.

Trial Examiner Kennedy: B-e-t-h-e-l. He has testified, has he not?



*Motion to Dismiss.*

Mr. Persinger: He was not on the stand.

Trial Examiner Kennedy: He was not on the stand. The second one?

Mr. Persinger: T. N. Curtis. He also was not on the stand.

Trial Examiner Kennedy: T. N. Curtis.

Mr. Persinger: And McKelvey.

Trial Examiner Kennedy: McKelvey.

Mr. Persinger: He was not on the stand.

Mr. Kitchel: Counsel, may I ask you a question at this time?

Mr. Persinger: Yes.

Mr. Kitchel: Have you determined who McKelvey is?

Mr. Persinger: I have not. That is one reason I am dismissing as to him. I understand that he is not in this part of the country, and I still do not know which one he is.

Mr. Kitchel: Okay.

Trial Examiner Kennedy: The motion is granted. The complaint will be dismissed as to Bert Bethel, T. N. Curtis and McKelvey.

Mr. Persinger: At this time, Mr. Examiner, rather than offer this entire list of names as an exhibit, this list which has been marked for identification as Exhibit No. 11, I should like to read into the record the summary appearing upon the face of the contents of the exhibit. This material was compiled by respondent in answer to the subpoena.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: Yes, there is objection. Has the Trial Examiner seen the document?

(The document referred to was passed to the Trial Examiner.)

Trial Examiner Kennedy: As I understand it, this has not been received in evidence?

*Motion to Dismiss.*

Mr. Persinger: No, it has been marked for identification.

Trial Examiner Kennedy: You wish to offer in evidence merely the first page of the exhibit?

Mr. Persinger: That summary.

Trial Examiner Kennedy: The summary.

Mr. Persinger: The summary of the contents.

Trial Examiner Kennedy: Is there any point made, counsel for the respondent, that the summary does not truly reflect the balance of the document?

Mr. Kitchel: No, there is no objection on that ground. May I state my objection, please?

Trial Examiner Kennedy: Yes, surely.

Mr. Kitchel: We object to the introduction of that first page of that document, or any part of it, upon the ground that it is irrelevant and immaterial to the issues of this case. As I recall it, it states the number of men hired since June 10, 1935, and it also classifies certain of them as to what time they were previously employed by the respondent. There is no evidence in the record in the Board's case as to the number of men who went out on strike. There is evidence in the record, as I recall it, from the Witness Bateman that some of the men who went out on strike have been reemployed, and I cannot see that this has any bearing on the issue before the Board at this time.

Trial Examiner Kennedy: Have you anything to say?

Mr. Persinger: If the Examiner please, there is at least evidence that some 40-odd witnesses went out on strike. They have testified. It may be necessary, if the Board should decide that any of the complainants should be reinstated, or that all of

*Motion to Dismiss.*

them should, to show over how many employees they are entitled to preference, and also for the purpose of clarifying the record on how many persons were employed for the purpose of replacing strikers.

Mr. Kitchel: There can be no question from the testimony that has been put on by the Board that whatever number of witnesses there have been for the Board, that there are some 40-odd who walked out on June 10, 1935. There is no way of disputing that.

The question of whether or not they should be reinstated, and if they are to be reinstated, the amount of pay, if any, they should receive, and the question of seniority and replacement of other men, as I understand it, the procedure of the Board is to determine at the time that the order is carried into effect.

Trial Examiner Kennedy: I believe that the material contained in this proposed exhibit might properly be introduced in rebuttal to some defense that the respondent might offer. That is a possibility. I will withhold ruling on the offer until the completion of the respondent's case.

Mr. Persinger: I now move to conform the pleadings to the proof in the following particulars:

The name of "William Daugherty," as appearing in the complaint, should be changed so that the spelling of his last name is "D-o-u-g-h"—not "D-a-u-g-h."

Similarly, the name of "Mike Mikelich" appears in the complaint and charge, which should be "Mike Mihelich, M-i-h-e-l-i-c-h," the difference between a "k" and an "h."

Trial Examiner Kennedy: Will you spell that the way it should be?



*Motion to Dismiss.*

Mr. Persinger: It should be "M-i-h-e-l-i-c-h."

The name "Edgar L. Hargus" appearing in the charge and complaint should read "Edgar Lewis Hargus, L-e-w-i-s."

The name "John H. Key" should read "John Henry Key".

The name "John Foley" should read "John Patrick Foley".

The name "Edward J. Bowden, Jr.," should read "Edward Bowden".

The name "W. D. Mortenson" should read "Wilford Davis Mortenson".

The name "A. T. Windsor" should read "Anson Perry Windsor".

The name "E. A. Curtis" should read "Emory Adelbert Curtis".

The name "Grover Windsor" should read "Grover D. Windsor".

The name "Joe Dunkerson" should read "Joe Henry Dunkerson".

The name "Vernon Curtis" should read "Vernon Dell Curtis".

The name "Alek Kalastro" should read "Alexander Kalastro".

The name "E. M. Scales" should read "Ellis Meran Scales".

The name "Merrell Johnson" should read "Merrell Earnest Johnson".

The name "William E. Sharpe" should read, "William Edward Sharpe," and the "Sharp" should have no "e" on the end.

The name "P. C. 'Dave' Lytle" should read merely "P. C. Lytle".

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And the name "H. J. Montgomery" should read "Herschel J. Montgomery".

I believe that that corrects the spelling of all the names.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: The motion is granted.

Mr. Persinger: The Board rests.

Trial Examiner Kennedy: Off the record.

(Discussion outside the record.)

Trial Examiner Kennedy: On the record. Is there any objection?

Mr. Persinger: No objection. I am in agreement with counsel.

Trial Examiner Kennedy: The hearing will be in recess until 9:00 o'clock tomorrow morning.

(Whereupon the hearing adjourned at 10:40 o'clock a. m., until 9:00 o'clock a. m., Thursday, February 3, 1938.)

**Proceedings.**

**BEFORE THE**  
**NATIONAL LABOR RELATIONS BOARD**  
**TWENTY-FIRST REGION**

**IN THE MATTER OF**

**PHELPS DODGE CORPORATION, a corpo-  
 ration,  
 and**

**INTERNATIONAL UNION OF MINE, MILL,  
 and SMELTER WORKERS, LOCAL No. 30.**

**CASE No.**  
**XXI-C-266**

**Room 2**  
**Cochise County Court House**  
**THURSDAY, FEBRUARY 3, 1938.**

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:00 o'clock a.m.

Before: **THOMAS H. KENNEDY, Trial Examiner.**

**APPEARANCES:**

**DAVID PERSINGER, Attorney on behalf of the National Labor Relations Board.**

**ELLINWOOD & ROSS, by DENISON KITCHEL and WILLIAM A. EVANS, 807 Title & Trust Building, Phoenix, Arizona, on behalf of Phelps Dodge Corporation, Respondent.**

**PROCEEDINGS**

**Trial Examiner Kennedy: The hearing will be in session.**



*Motion to Dismiss.*

Mr. Kitchel: Mr. Examiner, during the course of the Board's case the complaint was amended so as to include the name of Earl Worden. Mr. Worden has not appeared, nor has any testimony been put on with respect to him. I move now that the case be dismissed as to Earl Worden.

Mr. Persinger: That motion is agreeable with the Board. I omitted to do so yesterday.

Trial Examiner Kennedy: The motion is granted.

Mr. Kitchel: Based upon the Board's evidence, which has now been concluded, respondent wishes at this time to make motions to dismiss the complaint upon various grounds.

The first motion to dismiss is directed to the case of the following men: William Dougherty, Clyde Bigelow, Milton Wynn and Richard Johnson.

The basis of that motion is that there is no evidence upon which the Board could find that those men have been discriminated against, because of union activities.

With respect to Mr. William Dougherty, the testimony is uncontradicted that he was never a member of the Union, that he did not go out on strike, that he was not in the picket line.

With respect to Clyde Bigelow, Mr. Bigelow has testified that he was not a member of the Union, that he was never in the picket line.

Mr. Milton Wynn's testimony was to the effect that he was never a member of the Union after the year 1934, that he never was in the picket line.

With respect to Mr. Richard Johnson, the testimony is uncontradicted that he was never a member of the Union until he went to work for the Shattuck Denn in April of 1936, that he was not an employee of the company at the time of the walkout, and that he did not go in the picket line at any time.

*Motion to Dismiss.*

On those grounds, Mr. Examiner, we move to dismiss the complaint as to those four men.

Trial Examiner Kennedy: Do you wish to speak on that?

Mr. Persinger: If the Examiner please, I haven't carefully checked the testimony of these four, but my recollection is there is a certain amount of testimony that they were denied employment by the company on the ground either that in one case his family, I believe, had been active in the union and was not in good standing with the company, and in other cases, one case, I believe, that he had not co-operated with the company which, I submit, is somewhat vague and indefinite; and I believe in the other two cases they were denied employment on the ground they had been affiliated with the union.

As I say, I haven't checked that carefully. If the Examiner wishes, I can do so, but I believe there is sufficient evidence to prove that the refusal of the company to employ these men, or to re-employ them, was for the purpose of discouraging membership in the union. I don't think it is material in those particular cases that the men belonged or did not belong to the union, so long as the company acted on the belief that their sympathies lay with the union.

Mr. Kitchel: Does counsel take the position that anyone rejected for employment was being discriminated against for union activities?

Mr. Persinger: Counsel does not take that position.

Mr. Kitchel: We submit there is no evidence—

Trial Examiner Kennedy (Interrupting): Were all these men out on strike?

Mr. Kitchel: Two of them, Clyde Bigelow and Milton Wynn, were out on strike, according to their testimony.

Trial Examiner Kennedy: How many have you listed there?

*Motion to Dismiss.*

Mr. Kitchel: Four, Mr. Examiner.

Trial Examiner Kennedy: Bigelow and Wynn?

Mr. Kitchel: They both testified that they were not members of the union at that time.

Trial Examiner Kennedy: I don't think that is controlling. I will answer you on that point now.

Mr. Kitchel: They both testified that they were not in the picket line.

Trial Examiner Kennedy: I don't think that is controlling, either.

Mr. Kitchel: Now, Mr. Examiner, do we know that they were out on strike?

Trial Examiner Kennedy: Is their testimony that they were out on strike?

Mr. Kitchel: That is their own testimony.

Trial Examiner Kennedy: Very well. That is not contradicted yet. You will have a chance to rebut that, if you can; that is, as to Bigelow and Wynn.

The motion to dismiss as to those two gentlemen is denied.

Now, as to the other two men, what are the facts?

Mr. Kitchel: Mr. Dougherty was not employed by the company at any time after October 25, 1935. He was not a member of the union; he therefore did not go out on strike because he was not in the employ.

Secondly, he was not in the picket line.

Trial Examiner Kennedy: Do you know what the facts are on that, Mr. Persinger?

Mr. Persinger: No, Mr. Examiner. I do not know offhand.

Trial Examiner Kennedy: I will reserve ruling on the motion as to Dougherty until Board's counsel has made answer to that.

Mr. Persinger: I would suggest, Mr. Examiner, that possibly, if I had a chance to go through these exhibits, I may solve one or two of these questions.



*Motion to Dismiss.*

Trial Examiner Kennedy: I don't think that is necessary.

Mr. Persinger: I will do that during the recess.

Trial Examiner Kennedy: I beg your pardon?

Mr. Persinger: I think I can do that during recess.

Trial Examiner Kennedy: Yes. I will reserve ruling on Dougherty at this time.

Now, what is the fourth man?

Mr. Kitchel: The fourth man, Mr. Johnson, was never employed by the Phelps Dodge Corporation. He testified he was never a member of the union until he went to work for Shattuck Denn Mining Corporation in April, 1936, and he was not in the picket line.

Mr. Persinger: I believe, Mr. Examiner, that he further testified that he was told that his family was not in good standing. I think he was the one.

Trial Examiner Kennedy: He was refused employment, was he not, Mr. Kitchel?

Mr. Kitchel: I will have to check that.

Mr. Persinger: On the present testimony, he was refused employment.

Trial Examiner Kennedy: That is my impression.

Mr. Persinger: I think he was in a CCC camp during the time of the strike, and he requested employment afterwards and was refused.

Trial Examiner Kennedy: I will reserve ruling on Dougherty and Johnson until the testimony has been checked by the Board's attorney.

Mr. Kitchel: We would like, if possible, Mr. Examiner, to get rulings on some of these cases, in order to shorten the defense testimony.

Trial Examiner Kennedy: I think that point is well taken. I believe, if we take a 2-hour recess at lunch time, we can check those things and close those matters after lunch.

Mr. Kitchel: If it is agreeable with the Examiner, I will go through these motions and place them before

*Motion to Dismiss.*

the Board's attorney, so that counsel will have an opportunity to check the record as to them.

Trial Examiner Kennedy: Very well.

Mr. Kitchel: Respondent moves to dismiss against the following individuals:

William Guess, William Day, Levi Crandall, John P. Foley, Vernon Curtis, Grover Cornett and Richard Johnson, upon the grounds that, from uncontradicted testimony, they were not employees of the Phelps Dodge Corporation, Mines Division, on or immediately prior to June 10, 1935.

In that respect, Mr. Examiner, I call attention to Section 10 (c) of the National Labor Relations Act, which authorizes the Board to take affirmative action in connection with the reinstatement of employees with or without back pay. That is the limit of the Board's authority.

There is no way upon which these men can be found to be employees, or striking employees.

Trial Examiner Kennedy: Mr. Persinger?

Mr. Persinger: Mr. Examiner, it is true that if they were not employees at the time the Act became effective, they cannot be reinstated; but it does not follow that they cannot be made whole for any loss of pay they may have suffered by reason of a refusal to reinstate them, up to such time as they may have secured other and substantially equivalent employment, because, to permit respondent to avoid liability for loss of pay by laying off a man for a period, say, of three or four weeks, and then reinstating him, that is a very good penalty which the employer can use for the purpose of discouraging membership in a labor organization.

It is therefore essential, for the purpose of enforcing the Act, that back pay for non-employees be allowed by the Board in certain instances.

*Motion to Dismiss.*

I think that substantially all of these cases would fall into that category. I cannot cite a particular case, because I do not know that there has been a Board decision as yet, although there have been one or two cases tried on that point.

Mr. Kitchel: I submit, Mr. Examiner, there are no decisions by the Board—

Trial Examiner Kennedy: There are no decisions.

Mr. Kitchel (Continuing): —which would authorize their reinstatement. I object to the use of that word by counsel because, obviously, from their own testimony they were not employees at any time.

Trial Examiner Kennedy: Well, the refusal to employ, assuming they were not employees at the time they asked for employment, might be made the basis of the complaint.

Mr. Persinger: That is the basis of the complaint.

Trial Examiner Kennedy: Might that not be right?

Mr. Kitchel: You then are now no longer using the word "reinstatement". It is just as if a stranger of this company had applied for employment.

Trial Examiner Kennedy: In that case, if they were denied employment because of union activities, that would violate the Act, would it not?

Mr. Kitchel: If there is a possibility of the Board ruling to that effect upon this motion, we make the contention that any such contention would be a denial of liberty of contract under the Fifth Amendment. There is no court decision which authorizes a finding of that sort. Where there is a case either of striking employees or discharged employees, the courts have stated in many instances that there no new contract is required because a man has not been working because of an unfair labor practice, or an apparent labor dispute; but in the case of a stranger



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who has made application, if the Board should order his employment, we are getting into a field upon which there are no decisions to support the Board in such action.

**Trial Examiner Kennedy:** The Act seems to me to be quite specific in that. Section 8(3), "it shall be an unfair labor practice for an employer by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

**Mr. Kitchel:** Has the Examiner read Section 10(c)?

**Trial Examiner Kennedy:** Oh, yes. That is not exclusive, as I see it. Your reference there to reinstatement does not stop the Board from issuing a cease and desist order.

**Mr. Kitchel:** Well, in that connection, as I have already stated, we base that motion on the ground that any action on the part of the Board would be invalid under the Fifth Amendment.

**Trial Examiner Kennedy:** The motion is denied as to the last group of employees named.

**Mr. Kitchel:** Respondent next moves to dismiss with respect to the following employees: Clyde Bigelow, Henry Waters, H. D. Edge and William Morris, on the ground that by virtue of their own testimony, they are unemployable.

**Mr. Persinger:** Excuse me. What was the last name?

**Mr. Kitchel:** William Morris.

**Mr. Persinger:** Is that J. M. Morris?

**Trial Examiner Kennedy:** M-o-r-t-e-n-s-o-n, is that right?

**Mr. Kitchel:** No, Morris, this one is. J. M. Morris.

**Trial Examiner Kennedy:** M-o-r-r-i-s?

**Mr. Persinger:** Yes.

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**Trial Examiner Kennedy:** Mr. Persinger, do you wish to speak on that?

**Mr. Persinger:** There is no testimony in the record, Mr. Examiner, as to when these persons ceased to be employable. They were employable at the time of the strike. It is a matter of administrative procedure to determine when they ceased to be employable and determine any loss of pay they may have suffered.

Further, so far as the physical examinations are concerned, the only physical examination given is at the time when a man seeks employment. In other words, there is no evidence present that there is any regular examination period. Those persons would have continued to be employed by the company, so far as anyone knows, if they had not been refused reinstatement immediately following the strike, and that is the basis for contending that they are entitled to back pay for a certain period, at least.

Also, it is altogether possible that there are positions above-ground which those men could fill, and I don't want to say at this time whether or not the Board validly ordered them reinstated to a different position than that held formerly. I would have to give more thought to that particular question. I have never been concerned with it before, but I think that question is open to argument. However, certainly the case should not be dismissed as to those four.

In other words, it is a question of remedy, not the violation of the Act.

**Mr. Kitchel:** I will state, as an exception, Mr. Examiner, it is the testimony of Mr. Henry Waters that he was rejected at the Shattuck Deaf on account of his bad lungs, and he could not go to work on account of his bad health.

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**Trial Examiner Kennedy:** Even so, his dismissal would support an order to cease and desist, would it not, if the dismissal violated the Act?

**Mr. Kitchel:** You can't have an order to cease and desist on account of his health.

**Trial Examiner Kennedy:** You do not contend that he was unable to work at the time he was dismissed, do you?

**Mr. Kitchel:** I admit there is no evidence as to that.

**Trial Examiner Kennedy:** The motion to dismiss is denied as to those three men.

**Mr. Persinger:** Do you mean four, Mr. Examiner?

**Trial Examiner Kennedy:** I have Bigelow, Waters, Morris, and who is the other one?

**Mr. Persinger:** H. D. Edge.

**Mr. Kitchel:** Mr. Examiner, the respondent moves to dismiss the cases as to the following men: Leonard Guess, William Dougherty, William Day, Levi Crandall, John P. Foley—

Strike all that, Mr. Reporter. I have the wrong list here.

This motion goes to the following cases:

William Day, Levi Crandall, E. L. Hargus, John Henry Key, George Frazee, John P. Foley, Edward Bowden, Paul Amaro, Wilfred D. Mortenson, Anson Perry Windsor, Grover Windsor, Vernon L. Curtis, Grover Cornett.

**Mr. Persinger:** Excuse me. Will counsel wait a moment. I am lost. A. P. Windsor and whom?

**Mr. Kitchel:** Grover Windsor, Vernon L. Curtis, Martin Vaclav, Monte Reed, Alexander Kalastro, W. H. Bigelow, William H. Windsor, Ellis M. Scales, F. H. Erkkila, Luke Sertich, Merrell Ernest Johnson, William D. Graham, Jesse Edge, Richard Johnson, William E. Sharp, Jr., H. D. Edge, Milton Wynn, P. C. Lytle, Lester F. Bethel, Leonard Guess, Ben H. Stringer, Tom Abedin, Pete D. Caretto, Mike Mihe-



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lich, J. M. Morris, Clyde E. Bigelow, and Joe Henry Douglas.

The motion to dismiss in those particular cases is based upon the fact that from the testimony elicited from these witnesses on the Board's case, they have each and all of them received regular and substantially equivalent employment; that they have lost their status as employees under the definition of an employee under Section 2, Subdivision 3, of the Act. The Board's authority is limited to the reinstatement of employees within Section 10(c) of the Act. In order to reinstate these men or give them employment, respondent would be ordered to enter into a new contract to hire men who are, in effect, strangers to the corporation; that such a ruling would be in contravention of the provisions of the Fifth Amendment, and if such new contracts were ordered, with back pay, the provisions of the Fifth and Seventh Amendments would be violated.

If there was no order with respect to their being re-employed, but merely an order that they should receive back pay until such time as they received regular and substantially equivalent employment, such an order would be beyond the authority of the Board under Section 10(c) of the Act, and if such an order was entered into it would be in violation of the provisions of the Fifth and Seventh Amendments to the Constitution.

I might state, Mr. Examiner, that as to the first 25 men on that list, all of them are presently employed at the Shattuck Denn Mining Company.

Trial Examiner Kennedy: How many have you got on that list all told?

Mr. Kitchel: Thirty-eight.

Trial Examiner Kennedy: What is your position, Mr. Persinger?

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**Mr. Persinger:** It is the Board's position that these men have not secured other regular and substantially equivalent employment for five reasons:

One is that they have all lost their seniority. It has been testified that lay-offs at the Copper Queen Mine were determined on the basis of seniority, single men first, the seniority of single men first, and then the seniority of married men.

It has been testified that in the past there have been large lay-offs during the recent depression at the Copper Queen Mine; that the Shattuck Denn Mine closed down altogether. I think the Board can take judicial notice of the fact that during depressions there are large lay-offs, and the loss of seniority in the case of some of these men, seniority of perhaps from 10 to 15 years, means the difference between security and non-security whenever a mass lay-off occurs.

Secondly, that in applying for employment at the new place the record of continuous service at their previous place of employment is of considerable importance. Those men have lost that record. To some of them the records are of a great many years' continuous service which has put them at a disadvantage in applying for jobs elsewhere. Many of them have lost their safety, honor-roll records, which, it has been testified, is of considerable importance, particularly in securing jobs elsewhere and, also, in the case of lay-offs.

They have lost a certain security by losing those honor-roll records. It has been testified that there is in the minds of some of these men the fear that they are blacklisted in this community. There is further testimony that many of them have applied at many mines in this district and have been unable to secure employment at any place except the Shattuck Denn.

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They believe they have been blacklisted, and until they are reinstated and their records of the Phelps Dodge made continuous, that fear of blacklist would eliminate the possibility of contending that their present employment is substantially equivalent to what they had.

Lastly, each of their employment records, which have been introduced in evidence, bears the notation "Walked out on strike," and in most instances, "Was active on the picket line."

In applying for employment I think the Board may take judicial notice of the fact that it is customary to ask a man where he was previously employed and to contact his previous record and to check that previous record. I think the Board may well take judicial notice of the further fact that many employers would hesitate to employ a man whose previous record bears the notation which appears on the record in evidence. Until that record is wiped out by reinstatement and making their employment continuous with the Phelps Dodge Corporation, no employment at any mine in the State of Arizona could be substantially equivalent.

Mr. Kitchel: I take issue with counsel on several of those statements. In the first place, apparently counsel is not familiar with the fact that in this state we have what is known as a "blacklist statute." There is no testimony to the effect that any of these men feel that they have been blacklisted. There is no testimony that any of them went around in this district and applied for jobs at mines in this district and were rejected.

There is evidence that 25 of them are now working at the Shattuck Denn Mining Company. The blacklist statute prohibits the company from furnishing the record, such as counsel himself has ordered us to



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produce and has put in evidence, to any other employer who might request that information.

If the grounds stated by counsel in resisting this motion are correct, counsel, in effect, said that there is no such thing as regular and substantially equivalent employment. It is perfectly obvious that any man who leaves the service of one company where he may have worked for two or three years and goes to work for another company, that, even though it be at precisely the same job, he has with that new employer not the same seniority status, accident record, safety record or honor-roll record that he would have with his old employer. If counsel's contentions were correct, there could be no such thing as regular and substantially equivalent employment.

There is testimony in abundance in the record to the effect that the Shattuck Denn Mining Company's operations are substantially similar, the rate of pay is the same, the employment is regular and continuous. We contend that at least with respect to those 25 men there is no alternative for the Board but to dismiss as to them.

Mr. Persinger: There is one further point, Mr. Examiner, namely, that whether or not these men have secured substantially equivalent employment, even if they have, is not grounds for dismissal, since there is clear evidence that the company violated the Act in refusing to reinstate them following the strike.

One point counsel made, I think, perhaps, I did not express myself clearly upon. It was testified by one witness that he thought he had been blacklisted. Whether he has is a matter of fact which, I think, is not material. Unquestionably, that feeling exists in the minds others or, at least, it exists in the mind of one. Substantially equivalent employment should not be adjudged entirely on a material basis. If the

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men feel, or any of them feel, that they have been, or he has been, blacklisted, that is sufficient to make their present employment not substantially equivalent.

As to counsel's contention that on the statement made by me there can be no such thing as substantially equivalent employment, I am inclined to agree with counsel that in this state there can be no substantially equivalent employment for any of these men who were refused reinstatement following the strike, because a number of them are middle-aged, most of them are married, and security is a very important item. If a man gives up that security voluntarily, that is one thing. If he is denied that security by reason of a violation of the Act, that is something else altogether.

Trial Examiner Kennedy: The motion will be denied.

Mr. Kitchel: Respondent moves to dismiss, Mr. Examiner, as to all of the 45 cases pending, upon the ground that the Board has adduced no evidence to establish that respondent has committed an alleged unfair labor practice affecting commerce, as described in the Act.

I call the Examiner's attention to the definition of "affecting commerce," in Section 2 (7) of the Act, to the effect that: "Affecting commerce means in commerce or burdening or obstructing commerce, or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce, or the free flow of commerce."

I also call the Examiner's attention to the language of Chief Justice Hughes in the Jones and Laughlin case, in which he stated that: "Whether or not particular action does affect commerce in such a close and intimate fashion as to be subject to Federal con-

*Giles Higgins—For Respondent—Direct.*

control and, hence, to lie within the authority conferred upon the Board, is left by the statute to be determined as individual cases arise."

There is not one bit of evidence to the effect that the alleged unfair labor practice here has led to a labor dispute or has in any way tended to create a labor dispute between respondent and any of its employees.

Mr. Persinger: If the Examiner please, counsel is arguing that a successful unfair labor practice is not within the scope of the Act.

Trial Examiner Kennedy: The motion is denied.

Mr. Kitchel: Mr. Higgins, will you take the stand, please?

GILES HIGGINS, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your name, please?

The Witness: Giles Higgins.

*Direct Examination:*

Q. (By Mr. Kitchel) Mr. Higgins, are you an employee of the Phelps Dodge Corporation at the present time? A. Yes, sir.

Trial Examiner Kennedy: Speak out.

The Witness: Yes, sir.

Q. (By Mr. Kitchel) When did you first go to work for the Phelps Dodge Corporation? A. About the 26th or 27th of June, 1935.

Q. Prior to the time of the 25th or 26th, or thereabouts, of June, 1935, were you rustling a job with the Phelps Dodge Corporation? A. Yes, sir.



*Giles Higgins—For Respondent—Direct.*

Q. How long before those dates that we have mentioned were you rustling? A. Well, about three weeks—two or three weeks; I wouldn't be positive of it.

Q. Were you rustling prior to the walkout on June 10, 1935? A. Yes, sir.

Q. Were you rustling at any time between June 10, 1935, and June 25, 1935? A. Yes, sir. I rustled every day.

Q. Did you ever see the picket line at any place near the point where you were rustling? A. Yes, sir.

Q. Would you describe, Mr. Higgins, for the Trial Examiner, the time at which rustling commenced and the time at which the picketing line appeared, and what activity, if any, went on during that period? A. Well, the picket line formed as the men went to work in the morning, about 6:30 or 7:00 o'clock, I would say, and the employment office opened at 7:00, and the rustling commenced also at that time.

Q. Did the pickets attempt to picket those rustling the jobs? A. Yes, sir.

Q. Were there any conversations held between the pickets and the rustlers? A. Yes, sir; there was.

Q. Were there any attempts upon the part of the pickets to dissuade the rustlers from getting jobs? A. Yes, sir.

Q. Do you recall at any time during that period Mr. Bateman coming out on the platform? A. Yes, sir.

Q. Do you recall the pickets ever shouting at him? A. Yes, sir.

Q. Do you recall the morning of June 25, 1935? A. Yes, sir.

Q. Was that the day that you were employed? A. Yes, sir.

Q. Were you acquainted with Mr. William Day? A. Yes, sir.

Q. Did Mr. Day attempt to stop you from getting employment that day? A. Yes, sir.

Q. What did he do on that date? A. Well, as I—there was several of us fellows rustling for work, and I was in

*Giles Higgins—For Respondent—Direct.*

line, and several men walked in ahead of me, into the employment office. As I walked up the steps, started to step upon the steps, Mr. Day hit me in the nose.

Q. Did he hit you with his bare fist? A. No, sir; he was wearing gloves, I would say pigskin gloves, and it seemed kind of funny to me that he would be wearing gloves in the Summertime; it was June, of course.

Mr. Persinger: Just a moment. I move that that remark be stricken.

Trial Examiner Kennedy: That part starting, "it seemed kind of funny," may go out.

Q. (By Mr. Kitchel) Where did he strike you? A. In the nose.

Q. What did you do after that? A. Well, I went on into the employment office and the doctor fixed up my nose. Mr. Day and I had a few words. Of course, he was talking, I guess, quite a bit all the time.

Mr. Persinger: Just a moment. I move that that remark be stricken.

Trial Examiner Kennedy: Read that part, after "of course," Mr. Reporter.

(The record referred to was read by the Reporter as set forth above.)

Trial Examiner Kennedy: That may stay in.

Q. (By Mr. Kitchel) Mr. Higgins, were you hired at the time you then went into the employment office? A. Yes, sir. I was hired that day.

Q. Did you later file charges against Mr. Day? A. Yes, sir.

Q. Did you appear against Mr. Day on his preliminary hearing? A. Yes, sir.

Q. What was the charge filed against Mr. Day? A. Felony and assault, I think; it was hitting a guy under age; I wasn't of age at that time.

*Giles Higgins—For Respondent—Direct.*

Q. Did you know what the penalty was for that offense?

A. Yes. I know it was pretty severe.

Q. Was Mr. Day bound over to the Superior Court? A.

Yes, sir.

Q. Was his case ever tried? A. No, sir.

Q. Why was his case never tried? A. Because the day before the trial I came out and had a frank talk with Mr. Frank Thomas and the Judge.

Q. Who is Mr. Frank Thomas? A. The County Attorney.

Q. Who was the Judge? A. Judge Ross.

Q. What was the nature of your conversation with them? A. Well, I kind of felt—I don't know; I kind of felt sorry for Mr. Day. They had a pretty serious charge against him, and it might have meant three or four years in the penitentiary for him.

Mr. Persinger: Just a moment. I move that both remarks be stricken as a conclusion of the witness.

Mr. Kitchel: I am attempting to show the reason that this case was dismissed. All of this testimony goes, first, to the activity of the pickets in the neighborhood of the employment office; and, secondly, it goes to the impeachment of Mr. Day's testimony.

Trial Examiner Kennedy: Yes. I will let it stay in.

Q. Let me ask you what request you made of the County Attorney and the Superior Court Judge? A. Well, I told him that I wished to withdraw my charges because I didn't want to see the men get a sentence in the pen; it would just overhang me.

Trial Examiner Kennedy: A little louder, please.

The Witness: Shall I repeat all the answer?

Trial Examiner Kennedy: No, but from now on speak out so everybody can hear you.



*W. E. Simpson—For Respondent—Direct.*

Q. (By Mr. Kitchel) Were you given any assurance at that time that there would be nothing further of that sort? A. Well, I told the judge and Mr. Thomas that if the men would leave me alone I didn't want to have any trouble with anybody at all. I wasn't going to bother anybody, and if they would leave me alone I was willing to dismiss the charges against Mr. Day.

Mr. Kitchel: You may take the witness.

Mr. Persinger: If the Examiner please, counsel has stated that the evidence was in for two purposes: If he is attempting to discredit the testimony of Mr. Day, of course, it is permissible.

On his other ground, I move to strike it as being wholly unrelated to any issue before the Board.

Mr. Kitchel: May I speak on that, please?

Trial Examiner Kennedy: I don't think it is necessary. The motion is denied.

Mr. Persinger: No questions.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

W. E. SIMPSON, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: W. E. Simpson.

*Direct examination:*

Q. (By Mr. Kitchel) Mr. Simpson, are you employed by the Phelps Dodge Corporation at the present time? A. Yes.

*W. E. Simpson—For Respondent—Direct.*

Q. And how long have you been employed by the Phelps Dodge Corporation? A. Since August 21, 1935.

Q. When did you first come to the Bisbee district, Mr. Simpson? A. About July 15, 1935.

Q. Did you go to work immediately for the company? A. No, sir.

Q. Did you seek employment with the company at any time between July 1, 1935, and August 21, 1935? A. Yes, sir, I rustled on July 22, 1935.

Q. You were in the rustling line on July 22, 1935? A. Yes, sir.

Q. Were there any pickets present at the time that you were rustling on July 22, 1935? A. Yes, sir.

Q. Was there any difficulty or trouble between the pickets and those rustling? A. Yes, sir, there was a little.

Q. Was there any attempt upon the part of the pickets to dissuade men from applying for jobs? A. Yes, sir, there was quite a bit.

Q. Was there any violence of any sort? A. No violence.

Q. On that date, July 22nd, did the employment agent, Mr. Bateman, come out on the platform? A. Yes.

Q. Did the pickets yell at him? A. They hooted at him a little, and yelled at him.

Q. Did Mr. Bateman pay any attention to their activities? A. No, sir.

Q. On that date, did Mr. Bateman call any men into his office? A. Yes, sir.

Q. Were you called in at that time? A. Yes.

Q. Were you hired on July 22, 1935? A. No, sir.

Q. Were you given a physical examination on that date? A. Yes, sir.

Q. And what were you told? A. That I had failed the examination and was told to apply 30 days later if I still wanted to.

Q. When was the next time you returned to make application? A. August 21st.

*W. E. Simpson—For Respondent—Direct.*

Q. Do you remember what day of the week that was?  
A. It was on a Wednesday.

Q. Were you in the rustling line that day? A. Yes, sir.

Q. How many men would you say were in the rustling line that day? A. Approximately 30.

Q. And were there any pickets present? A. Yes, sir.

Q. About how many would you say were in the picketing group? A. About 20.

Q. Did Mr. Bateman come out to the platform that morning? A. Yes, sir.

Q. What did he say, if you recall? A. Mr. Bateman called in two men and then he says, "That will be all for this morning. Next rustling day will be next Friday."

Q. Did he say anything further? A. No.

Trial Examiner Kennedy: Speak out.

The Witness: No.

Q. (By Mr. Kitchel) Did you hear anyone shout at Mr. Bateman "How about my job?" A. I heard someone, yes, sir.

Q. Where were you standing? A. I was standing right next to the steps where the usual line of rustlers stood.

Q. Were you standing between Mr. Bateman and the picket group? A. Yes.

Q. Did Mr. Bateman make any response to those shouts about "How about my job?" A. No.

Q. Would you have heard him if he had? A. I should have. I was standing between them.

Q. Did Mr. Bateman say anything further? A. No, sir.

Q. Did Mr. Bateman then return into his office? A. Yes, sir.

Q. What did you do? A. I waited until the rustlers left and then I went in myself to see Mr. Bateman.

Q. Were you hired on that date? A. Yes, sir.

Q. When did you go to work? A. The 22nd of August.

Mr. Kitchel: Take the witness.



*W. E. Simpson—For Respondent—Cross.**Cross examination:*

Q. (By Mr. Persinger) Mr. Simpson, what time did you go on the rustling line on the morning of August 21st? A. August 21st—it must have been about 7:00 o'clock when I went.

Q. And how long was it after that that Mr. Bateman called two men in? A. It must have been about 20 minutes until 8:00, I would say.

Q. About 20 minutes to 8:00? A. Yes, sir.

Q. What time was it that Mr. Bateman first came out on the stoop or platform? A. About 20 minutes until 8:00.

Q. And when he came out, what did he say, what did he do? A. He called two men in.

Q. And what words did he use? A. He just said he wanted to see—he called the two men.

Trial Examiner Kennedy: A little louder, please.

The Witness: He called the two men's names that he wanted to go, and called them in.

Q. (By Mr. Persinger) He merely came out on the stoop and called some name, and another name, "Come in here"? A. Yes.

Q. Is that all? A. Well, he turned around then and said, "That will be all until Friday, the next rustling day."

Q. And how long did it take him to call those two men in after he got out on the platform? A. Well, not very long.

Q. Two or three minutes, perhaps? A. Well, it wouldn't take that long. Less than that, I imagine. Just long enough to say, "It would be all."

Q. And you were hired later on that same day? A. Yes, sir.

Q. How do you estimate the time as being 20 minutes to 8:00? A. Well, because I usually went down at 7:00 o'clock. That was the usual time for the men to gather that rustled, and the office usually opened around 7:30, and Mr. Bateman

*W. E. Simpson—For Respondent—Cross.*

usually came out just a few minutes after the employment office opened.

Q. When you reached there at about 7:00 o'clock, how many pickets were standing around? A. There was approximately 20 men.

Q. Were you one of the first of the rustlers? A. Yes, sir.

Q. By the time it was 7:30, was the group substantially the same as it was at the time Mr. Bateman came out on the platform? A. Rustlers!

Q. The number of rustlers, the number of pickets. A. There were a few more rustlers at that time than there was at 7:00 o'clock.

Q. And at 7:30 and before that there was substantially 30, approximately, rustlers, say, by 7:20? A. I would say that, yes.

Q. About 20 pickets? A. Yes, sir.

Q. Do you know what time the shift went on that morning? A. 7:00 o'clock, I think it was.

Q. 7:00 o'clock? A. Yes, sir.

Q. And there were 20 pickets standing around, some rustlers, when you got there at 7:00? A. Yes, sir.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: Nothing further.

*Examination by the Trial Examiner:*

Q. (By Trial Examiner Kennedy) What is your present position? A. Miner.

Q. Have you had the same position all the time you have been at Phelps Dodge? A. No, sir, I hired out as a mucker, but I am mining now.

Q. When did you get promoted? A. I got promoted in March of this year, '37—but I have held different jobs between then. I have had several promotions and several demotions.

*W. H. Crane—For Respondent—Direct.*

Q. Did you ever belong to the union? A. No.

Q. Are you under subpoena here? A. No.

Q. How did you happen to come down here to testify?

A. Well, Mr. Bateman asked me what I knew, and I told him, and he asked me if I had any objections to coming down and telling them what I knew, and I said no.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Kitchel: Nothing further.

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.  
(Witness excused.)

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W. H. CRANE, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name?

The Witness: W. H. Crane.

*Direct examination:*

Q. (By Mr. Kitchel) Mr. Crane, were you employed by the Phelps Dodge Corporation at any time in the Summer of 1935? A. Yes, sir.

Trial Examiner Kennedy: Speak out loud so everybody can hear you.

Q. (By Mr. Kitchel) When were you hired, Mr. Crane? A. Well, I was hired about two or three days before the strike was called off.

Q. Do you remember what the day was that you were hired? A. Not just exactly.

Q. Do you remember the day of the week? A. No, I don't.



*W. H. Crane—For Respondent—Cross.*

Q. Did you rustle several times before you were hired?

A. Yes, I rustled two or three days, three days it was.

Q. What month of the year was that? A. That was in August, I believe.

Q. Were there pickets present when you were rustling?

A. No, not the employment office.

Q. Not at the employment office? A. No.

Q. Do you recall the date on which you were hired? A. Sir?

Q. Do you recall the date on which you were hired? A. Yes, I was called in.

Q. Were there any pickets standing out there that day?

A. Not that I noticed, never said anything.

Q. Did you hear any pickets say anything to Mr. Bateman that day? A. No, sir.

Q. Do you recall Mr. Bateman coming out on the platform that morning? A. Yes, sir, he came out and called me in.

Q. Did he call anybody else in? A. Yes, I believe he called another feller in.

Q. Did he call just two men in? A. I believe it was; that may be; it was quite a while ago. There was two of us went in, I know.

Q. Did you hear Mr. Bateman say anything, or make any statements, to the crowd? A. No, sir.

Q. Did he follow you right in? A. Yes, sir.

Mr. Kitchel: Take the witness.

*Cross examination:*

Q. (By Mr. Persinger) What day were you employed, Mr. Crane? A. Well, I couldn't say just exactly.

Mr. Persinger: No further questions.

*Examination by the Trial Examiner:*

Q. (By Trial Examiner Kennedy) It was some time in the Summer of '35 that you were employed? A. Yes, sir.

*W. H. Crane—For Respondent—Cross.*

Q. And you are still employed? A. No, sir.

Q. When did you leave? A. I left about a year later.

Q. Did you ever belong to a union? A. Yes, sir.

Q. What union? A. Western Federation of Miners.

Q. Are you still a member? A. No, sir.

Q. When did you cease being a member? A. Oh, about  
—I quit.

Q. Well, when was that? A. Oh, I guess around about  
1910.

Q. 1910? A. Yes.

Q. You haven't belonged to any union since 1910? A.  
No, sir.

Q. What are you doing now? A. Ranching.

Trial Examiner Kennedy: Anything further.

Mr. Kitchel: Nothing further.

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Kitchel: May we have a short recess at this  
time?

Trial Examiner Kennedy: Yes, we will take a 10-  
minute recess.

(At this point a short recess was taken, after which  
proceedings were resumed, as follows:)

Trial Examiner Kennedy: The hearing will be in  
session.

Mr. Kitchel: Mr. Examiner, will there be any fur-  
ther need for Mr. Simpson, Mr. Crane and Mr.  
Higgins?

Mr. Persinger: Not as far as I am concerned.

Trial Examiner Kennedy: They are permanently  
excused.

Mr. Kitchel: Mr. Newton, will you come over,  
please?

*Irvine Earl Newton—For Respondent—Direct.*

IRVINE EARL NEWTON, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your name, please?

The Witness: Newton, Irvine Earl.

*Direct examination:*

Q. (By Mr. Kitchel) Mr. Newton, are you employed by Phelps Dodge Corporation at the present time? A. Yes, sir.

Q. When did you go to work for the Phelps Dodge Corporation? A. On August 22nd.

Q. Of what year? A. 1935.

Q. What day in 1935 were you hired? A. On August—on the 22nd of August.

Q. August 22nd? A. Yes.

Q. Were you in the rustling line the day preceding August 22nd, 1935? A. Yes, sir.

Q. What date was that? A. That was in '35.

Q. What day of the month was that? A. The 22nd of August.

Q. Well, I asked you if you were in the line the day preceding that? A. Oh, no; no, I wasn't.

Q. The morning you were hired, Mr. Newton, were there any pickets at the time you were in the rustling line? A. Yeh.

Q. How many pickets would you say were standing around at that time? A. Well, I didn't know the men, but I would say four or five, in a way.

Q. Are you acquainted with Mr. William Day? A. Well, I wasn't at the time; I know him now by sight.

Q. On the morning that you were hired, did Mr. Bateman come out on the platform? A. Yes.

Q. What did he do, Mr. Newton? A. Well, he called two gentlemen's names. He said, "That will be all this morning, boys."



*Irvine Earl Newton—For Respondent—Cross.*

He went on in and went back.

Q. Did you hear anybody in the picket line holler at him?

A. Yes.

Q. What was said? A. Well, I don't know the exact words, what was said on that. They just hollered something to the effect that, "If we don't get our jobs back," or—

Q. Did Mr. Bateman make any response to that? A. No.

Q. Was anything said by Mr. Bateman further than what you have testified? A. No.

Q. Did he go back into his office? A. Yes.

Q. After he made the statement you have testified to? A. Yes.

Q. What did you do after the rustling line broke up that day? A. I walked in the office to see Mr. Bateman.

Q. Did you go to work that day? A. Yes.

Mr. Kitchel: I believe that is all.

*Cross examination:*

Q. (By Mr. Persinger) You were employed August 22nd? A. Yes.

Mr. Persinger: No questions.

Trial Examiner Kennedy: You are excused.

Mr. Kitchel: May this witness be permanently excused?

Mr. Persinger: Yes.

Trial Examiner Kennedy: That will be the ruling as to each witness, unless counsel in the case state they wish the witness to be recalled.

(Witness excused.)

Mr. Kitchel: Mr. Herbert, will you come forward, please.

*Earl Herbert—For Respondent—Direct.*

EARL HERBERT, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your name, please.

The Witness: Earl Herbert.

*Direct examination:*

Q. (By Mr. Kitchel) Mr. Herbert, are you employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. At the present time? A. Yes, sir.

Q. When were you first employed by the Corporation?

A. This last time, I went to work September 26th.

Q. Of what year? A. 1935.

Q. Were you in the rustling line on August 21, 1935?

A. Yes, sir.

Q. How many men would you say were rustling that morning when you were there? A. Oh, I would say between 30 and 40.

Q. Were there any pickets present? A. I couldn't recognize them as pickets down around the employment office. There was a few up around the gate. There was a few men standing there. I wouldn't recognize them as pickets.

Q. Did Mr. Bateman come out on the platform that morning? A. Yes.

Q. Do you recall what he did and said? A. He called in three men.

Q. Did he make any statement? A. No, sir.

Q. Did you hear anybody call out to him about a job?

A. There was some man in the back of the crowd said something about, "When am I going to get my job?" or some words to that effect. I couldn't repeat the exact words.

Q. Did Mr. Bateman make any reply to that? A. No, sir.

Q. Were you present the whole time Mr. Bateman was on the platform? A. No. I went into the office just before Mr. Bateman did.



*Earl Herbert—For Respondent—Cross.*

Q. Did he follow you in? A. Yes.

Q. Would you have heard anything if he had said it?  
A. I think I would have.

Mr. Kitchel: That is all.

*Cross examination:*

Q. (By Mr. Persinger) Mr. Herbert, when did you first start rustling in the Summer of 1935? A. Well, I rustled off and on nearly all Summer.

Q. Do you remember about when you started, for the first time? Was it before or after the strike? A. It was before the strike.

Q. Before the strike? A. Yes.

Q. And you continued to rustle until what time? A. Until the 26th of September.

Q. Until you received employment in September? A. Yes.

Q. Did you rustle every day during that period? A. Oh, no; I only rustled, I would say, maybe five or six times.

Q. Maybe five or six times? A. I was working part time for different people around town; just odd jobs.

Q. When was the date on which you first rustled? A. Well, it would be about the middle of March.

Q. Do you remember the exact date? A. No, I don't.

Q. What was the second time you rustled? A. Well, I couldn't give you the exact dates.

Q. Could you give an approximate date? A. Well, it would be somewhere around the middle of April, the second time.

Q. When would be the third time? A. Well, I couldn't definitely say. It would be—let's see. I was working on odd jobs around. Sometimes they would last six or seven days; sometimes a week, and I just rustled when I wanted to work, and I couldn't tell you the exact dates.

Q. How many times would you say you rustled prior to the strike? A. I would say about four.



*Earl Herbert—For Respondent—Cross.*

Q. And after the strike, how many times did you rustle before you actually got a job? A. Once.

Q. Just once, one occasion? A. Yes.

Q. And when was that? A. That was—I went to work September 16th; that would be about September 15th.

Q. Well, you had rustled before that after the strike started, hadn't you? A. After the strike started; yes.

Q. Yes. Well, how many times between the time the strike started and the time you got your job did you rustle? A. Twice.

Q. Twice? A. Yes.

Q. And the first time was when? A. The 21st of August.

Q. Now, you said you went into the employment office ahead of Mr. Bateman? A. Just ahead of Mr. Bateman; yes.

Q. Did he call you in by name? A. Yes, but not by my full name. Just called me Earl.

Q. You knew Mr. Bateman? A. Yes, I knew him personally.

Q. What did you do on that occasion, take a physical examination? A. No. We just talked it over and he took more or less of an application, rather, just asked me a few questions about it and told me to come back later.

Q. He took down your application? A. Well, he didn't make out a blank. It was just more or less oral.

Q. In other words, you just talked to him? A. Just talked to him about it.

Q. And you went back the 15th of September and went to work the 16th? A. Yes, sir.

Q. Were you working just before August 21st? A. Had odd jobs around town.

Q. Were you working just after August 21st? A. Well, a few days later; yes.

Q. How do you fix the date as being exactly August 21st? Do you have any written record that it was on August 21st

*Earl Herbert—For Respondent—Cross.*

that you had this talk with Mr. Bateman? A. No, I have no written record; no. I just remember when I went up.

Q. How do you remember the exact date, although you don't remember any other dates except the one on which you got your job? A. That was the first time that I really got in to talk with Mr. Bateman, and I went home and talked to the wife, and she said, "Well, remember it. We might want to refer to it."

Q. Your wife suggested that you remember that date? A. Yes.

Q. Did she say why you might want to refer to it? A. No, not exactly.

Q. And what was the first occasion on which you did want to refer to it? A. I do not remember.

Q. Have you referred to that date at any time until the last few weeks? A. I have talked to my wife about it several times; yes.

Q. When you went back on September 15th, did you stand in the rustling line? A. Yes, until he called me in.

Q. And he called you in by name? A. Yes.

Q. And those were the only two occasions after the strike started that you were on the rustling line? A. Yes.

Trial Examiner Kennedy: Speak out. What was the answer to the last question?

The Witness: "Yes."

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: No further questions.

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Do you belong to the Union?

The Witness: No.

Trial Examiner Kennedy: You are excused.

(Witness excused.)



*M. A. Bateman—For Respondent—Direct.*

M. A. BATEMAN, having been heretofore duly sworn, was recalled as a witness by and on behalf of the respondent, and further testified as follows:

Mr. Kitchel: This witness has been sworn before, Mr. Examiner.

*Direct examination:*

Q. (By Mr. Kitchel) Mr. Bateman, you have been previously sworn to testify in this case? A. I have, sir.

Q. Have you testified previously in this case that you were the employment agent of the Mines Division of Phelps Dodge Corporation? A. I did, sir.

Q. Were you employment agent in the Summer of 1935? A. Yes, sir.

Q. And for how many years did you hold that position, Mr. Bateman? A. Approximately 12.

Q. And how many years did you testify that you had worked for the company? A. 27,—nearly 27.

Q. Mr. Bateman, at the time that you were employment agent, was every applicant for a job required to take a physical examination? A. Yes.

Q. Were men rejected who had bad lungs? A. Yes, sir. We took no chances whatsoever on a lung condition.

Q. Do you know a Mr. William Dougherty? A. I do.

Q. Have you checked your records to find out when he was last employed by the company? A. Yes, sir.

Q. And when was he last employed by the company? A. In 1934.

Q. Do you know what time of the year? A. No, I do not. I do not know the date.

Q. Did Mr. Dougherty make application for reemployment while you were employment agent? A. He did; yes.

Q. And when was that, Mr. Bateman? A. On January 15, 1937.

Q. Did he make application at any time prior to that that you recall? A. Well, he submitted his application several days prior to that; yes.



*M. A. Bateman—For Respondent—Direct.*

Q. Did you talk to him on the first occasion that he made his application? A. Yes, sir.

Q. And what did you tell him at that time? A. As near as I can recollect, I told him that I would look into his record and that he should see me in a few days.

Q. And did he come back? A. He did.

Q. And what happened upon the occasion of his second visit? A. I think I told him to rustle.

Q. Was he given a medical examination that day? A. I believe I called him in that morning, and he was in the rustling line when I called him in, and wrote up his record and had him examined.

Q. Was he hired that day? A. He was selected to be hired.

Q. Was he sent to the hospital for any purpose? A. Yes; following the physical examination he was sent to the hospital for an X-ray.

Q. And when did he come back? A. The following day. I presume it was at 10:00 o'clock; that was customary.

Q. Had you by that time received reports from the examining physician and the hospital? A. I had.

Q. Was Mr. Dougherty employed on that day? A. He was rejected for employment.

Q. Why was he rejected? A. On account of his lung condition.

Q. Did you state to Mr. Dougherty on that date that men had come to you and told you that he had called them "scabs," and that you did not want any trouble, and that therefore you couldn't put him on? A. I don't believe I did. I don't see why I should have had occasion to. He was simply rejected on his physical qualifications.

Q. Mr. Bateman, are you acquainted with Mr. William Sharp, Jr.? A. I am.

Q. When did you last see him? A. In Morenci, Arizona.

Q. What were you doing at Morenci? A. I was there revising and standardizing the employment methods and procedure.

*M. A. Bateman—For Respondent—Direct.*

Q. Were you an employment agent of the company at that time? A. I had nothing to do whatsoever with employment matters outside of the system of procedure.

Q. Did you have any authority to hire any persons? A. Not a person, no authority of that nature.

Q. Who was the employment agent of the Phelps Dodge Corporation at Morenci at that time? A. Mr. W. E. A. Hawke, and he has been for many, many years.

Q. Approximately what was the date when you saw Mr. Sharp at Morenci? A. It was in the latter part of October or the first part of November, I believe.

Q. Of 1937? A. Yes, sir. I was there 10 weeks.

Q. What were the circumstances of your seeing Mr. Sharp at Morenci? A. Well, I happened to receive a long distance telephone call and I had to pass from the employment office, which is 400 or 500 feet from the general office in Morenci where the telephone station is situated, and on passing to the office I had to pass, oh, by possibly a hundred men who were there rustling. After I passed these men, I saw Mr. Sharp and some other gentleman sitting on a wall with a rail on it, and I was walking hurriedly in order to catch the call. I just paused a moment and said, "Hello, Sharp. What are you doing up here? Where have you been?" and remarks of that nature, and passed to the office, hardly without stopping. I hardly paused. They were sitting there when I came back. I was only gone a minute or two, and I think I said, "Hello," or smiled at them, and passed on.

Q. Did you have any conversation with him with respect to the possibility of his getting a job with the Phelps Dodge Corporation? A. Not whatsoever. I had nothing whatsoever to do with employment. I had been released from that phase of the work and, naturally, I couldn't intercept Mr. Hawke's duties there. It would have been fatal, if I did, to me.

Q. Was there anything further said between you and Mr. Sharp other than what you have referred to? A. Not



*M. A. Bateman—For Respondent—Direct.*

that I recall. It was a very, very brief conversation, and a more or less passing "How-do-you-do."

Q. Mr. Bateman, were you the employment agent at the time of the walk-out on June 10, 1935? A. Yes, sir.

Q. From your office were you able to see the activities of the picket line? A. Well, that is in so far as it was concerned there at the office. There was a raised platform about the height of the desk here (indicating) from the floor, which precedes the entrance into the office and, of course, all my business, in so far as selecting employees, was transacted from that platform.

Q. Mr. Bateman, from June 10, 1935, on for the next month or two, would you outline what the procedure with respect to rustlers and pickets was in the morning? A. Well, at the outset the miners went to work or went on shift at 7:00 o'clock, and the employment office was opened at 7:30. It was the usual procedure for the pickets, of course, to leave the Junction gate and the Campbell gate and arrive at the employment office at about the time I arrived there.

Q. What time was that? A. 7:30. In the meantime some of the boys would stroll to town and loaf about the streets there and come back at the time I arrived. Again, others would get in their cars and remain in their cars. Some of them had their cars there, and when I drove up they would dismount their cars and assemble in front of the office. The rustlers would do the same.

Q. Would you say, Mr. Bateman, that the activities of the pickets who returned to the employment office, as you have testified, were in the nature of picketing in front of the employment office? A. Well, I don't see how I could assume anything else. They were there. They were peaceable at times. Everything was very quiet. There were some days when it was boisterous and there was a lot of yelling, hollering.

Q. From your observations, would you say that there were any attempts to prevent men from rustling jobs? A.



*M. A. Bateman—For Respondent—Direct.*

Well, about that, I would say that in most instances they were very orderly. They did talk to men. They would congregate about men. I have seen four or five men talking to one man. They would, of course, pick out the new men and congregate about them. What they said, I couldn't hear.

Q. As employment agent did you consider the men in the group which was derived from the picket line as men who were rustling jobs? A. Well, of course, that would be easy to establish after the third or fourth day. I could determine, of course, by their activities as to what their purpose was there.

Q. Do you recall, Mr. Bateman, the morning of August 21, 1935? A. I do.

Q. Was that a rustling day? A. It was, sir.

Q. Approximately what time did you arrive at your office that morning? A. Well, I was generally quite punctual. It was probably 5 to or 5 after 7:30.

Q. Were there rustlers present? A. Yes.

Q. About how many would you say at the time you went into your office? A. Oh, there were probably 30 rustlers, 35; something like that, I would imagine.

Q. Are you acquainted with Mr. William Day? A. Yes, I have known Mr. Day for quite some time.

Q. Mr. Levi Crandal? A. Yes, and he also.

Q. Mr. Key? A. Yes, for many years.

Q. Were you familiar with all of the pickets? A. Well, probably 90 per cent of them.

Q. Well, was there a group of pickets present on that day when you arrived? A. Yes, there were some then.

Q. Were the men, whom I have mentioned, in the group, if you recall? A. Yes, sir.

Q. Prior to that date, Mr. Bateman, were there any occasions when the pickets called at you and heckled you when you came out on the platform? A. Well, there were lots of days.

Q. Was that an unusual occurrence if that happened? A. No. It went on throughout the whole time of the strike.

*M. A. Bateman—For Respondent—Direct.*

Q. When you arrived did you go into your office on the morning of August 21st? A. Yes, sir.

Q. Did you later come out on the platform? A. I did.

Q. What did you do and say? A. Well, as I recall it, and having looked up the records and refreshed my memory, on that particular morning I was going to hire one man only, and in looking over the crowd I saw Mr. Crane who was standing at the foot of the steps. Mr. Crane was a very capable miner and had worked for us for many years, and I said to him, "Are you rustling, Bill"? He said, "Yes." I said, "Come on in." So I hired those two men only.

Q. Did you say anything to the crowd? A. I dispersed the crowd, as I recall, and told them to rustle again on Friday. That was a Wednesday.

Q. Did you hear Bill Day or any of the members of the picket line holler at you about a job? A. Well, they were chattering, and they all were, but I disregarded it, as I had been doing.

Q. Did you make any statement at that time while you were on the platform other than the one that you have testified to? A. Not that I recall.

Q. Did you state, in answer to cries of "How about a job"? that "You fellows will never work for the Phelps Dodge Corporation again"? A. No.

Q. Did you make that statement? A. No.

Q. Mr. Bateman, when you were employment agent, where did you do your hiring? A. At the employment office.

Q. Did you have regular hours? A. Yes, sir.

Q. Did you do any hiring outside of the office? A. None whatsoever.

Q. Were there occasions when people spoke to you on the streets about getting jobs? A. Oh, that was a very common occurrence.

Q. Would you say that you were intimate with most of the men who worked for the company during a period of many years? A. Yes, I knew most of them.

*M. A. Bateman—For Respondent—Direct.*

Q. Would you say that you were familiar with the large majority of the people who reside in the district here? A. I think so. I knew a considerable majority of the population.

Q. What would you tell a person when he spoke to you about a job on the streets? A. Well, that all depended. Sometimes wherein a man came up to me very seriously and wanted to discuss employment with me, why, I would spend considerable time with him. And again it is merely a gesture "How about a job"? or "What's doing up there"? or something like that.

If it was more or less a passing remark, I went on about my buisness. Yet I don't think there was anyone that rustled very long that didn't understand that all hiring was to be done at the employment office.

Q. Did you ever hire a man at any place other than the employment office? A. No, sir.

Q. Mr. Bateman, it has been testified in this case that on about the 13th day of June, 1935, from the platform of your employment office you made the following statement: "If you boys don't go back to work tomorrow, you will never work for the company again." Did you make that statement? A. No, and may I add further that at that time I did not know what the extent of the strike was, and would have no reason for making such a remark to anyone.

Q. Are you acquainted with Mr. Paul Amaro? A. Yes.

Q. It was testified, Mr. Bateman, that in your office in the Fall of 1935, around September or October, you made the following statement, or you made a statement to this effect: That you could not consider Mr. Amaro for a job, or any other of the striking miners. Did you make such a statement, or a statement to that effect? A. No.

Q. Are you familiar with Mr. W. D. Mortenson, Mr. Bateman? A. Yes, I know him well.

Q. It has been testified in this case that on or about December 1, 1935, in your office, you made the following statement to Mr. Mortenson: "Mortenson, if you want a job



*M. A. Bateman—For Respondent—Direct.*

you will have to go to a union camp to get it. There is nothing in Bisbee for you." Did you make a statement such as that to Mr. Mortenson at any time? A. I did not.

Q. Are you acquainted, Mr. Bateman, with Mr. Tom Abedin? A. Yes.

Q. Do you recall having had a conversation with him on the street at any time during the years 1935 and 1936? A. I may have had several. I saw Tom at intervals of every two or three days there in Lowell.

Q. Did you ever make a statement to Mr. Abedin—perhaps not in these words—to this effect: "No showing for you guys no more." Did you ever make a statement to that effect to Mr. Abedin? A. No.

Q. Are you acquainted with Mr. Grover Windsor? A. Yes.

Q. It has been testified, Mr. Bateman, that you, around December, 1935, or November, 1935, in your office, made the following statement to Mr. Grover Windsor:

"A hundred years after the next war I will give you a job."

Did you make such a statement, or a statement to that effect to Mr. Grover Windsor? A. Was that Grover Windsor?

Q. Yes. A. Or Vernon Curtis?

Q. Grover Windsor, in your office, it was testified. A. I remember one evening I was standing in Lowell talking to a friend of mine who conducts a pool hall there, and Mr. Curtis came by with two or three others. I don't remember now whether Mr. Windsor was with them or not, but they were walking hurriedly down the street. They happened to spy me and they waved their hands, "Hello, Bate; how about a job?" And I said, "Three hundred years after the next war." I remember saying that.

Q. Were you on duty at that time? A. No, that was in the evening. It was dark. I remember it very well. The street lights were on.

*M. A. Bateman—For Respondent—Direct.*

Q. Do you always speak, Mr. Bateman, in a very serious tone in your conversations? A. Not always, no.

Q. And who was that you said that you believed you made that statement to? A. I think it was to Vernon Curtis.

Q. Mr. Bateman, are you acquainted with Monte Reed? A. Yes, I have known Monte many, many years.

Q. It has been testified in this case that some time on or about the 21st of June, 1935, you had a conversation with Mr. Reed in your office, in which it was stated that you made the following remark:

"Well, we want you to clean them out because as far as you fellows are concerned, the strike is never going to be over for you."

The testimony was that prior to that there was reference to clothes in the lockers. Was there such a conversation with Mr. Reed? A. What was the date?

Q. About June 21, 1935. A. Well, I think I recall that. It was occasioned due to having put on quite a number of new men following the strike, and we were running out of locker space, and Mr. Reed—this was a payday, and Mr. Riefsnider came to me that morning and asked me to ask any of the boys who had their clothes in the locker that were not working to remove them, that the new men had to change in the aisles and elsewhere, and it created quite a bad condition, and so, as the boys came in for their checks, identification slips, I asked each and all of them if they were working, and if not, to remove their clothes, and made no reference whatsoever to the strike, and I think probably I asked 25 or 30 men that day.

Q. Did they move their clothes out of the lockers? A. Yes, I understand most of them did. We had space after that, I know.

Mr. Persinger: Counsel, off the record, Mr. Examiner?

Trial Examiner Kennedy: Off the record.

*M. A. Bateman—For Respondent—Direct.*

(Discussion outside the record.)

Trial Examiner Kennedy: On the record.

Q. (By Mr. Kitchel) Who is Mr. Riefsnider? A. He is the master mechanic.

Q. Mr. Bateman, while you were employment agent did you make the statement—strike that, please.

Are you familiar with the names of the 45 men who are in this case? A. Yes, I am.

Q. Mr. Bateman, at any time while you were employment agent did you ever make statements to these or any other men about the union, or about the strike activities? A. No, but just what way do you mean?

Q. Well, you have heard the statements that have been testified to. I am referring to statements of that nature. A. I don't think that I ever discussed the strike with any individual, or their activities, because early in 1933 I think when the Code, the N. R. A., first went into effect it was a provision of that Code that men were not to be interrogated concerning their labor affiliations, and in no instance did I do that, and I have been repeatedly warned against so doing.

Q. Were those instructions given to you on and off down through the year 1935? A. Well, I remember when the Wagner Act went into effect I was again warned concerning that phase of the Act.

Q. You state that you are familiar with the names of men involved in this case. How many of those men would you say, Mr. Bateman, have applied for employment more than once? Have you got a list there that you can refer to? A. I have. Offhand, not more than three or four.

Q. Are there any on that list that, to the best of your recollection, never applied for employment? A. There were 11 who have never applied for employment since June 10, 1935.

Q. How many times, to the best of your recollection, have the balance of that list applied for employment? A.



*M. A. Bateman—For Respondent—Direct.*

Well, that determines on that what we would consider an application for employment. Some of them came to the door and hollered in and said, "Is there anything doing?" And others would come in at intervals, or came in once that I know of.

Q. From your experience as employment agent, Mr. Bateman, is it customary as a general rule to hire a man who only makes one application for employment? A. No.

Q. What is the— A. May I add that during this whole period of—well, it is two years and a half, nearly—a great many of those men—I went over that list and found about 20 of them had only been in the office once in the two years and a half.

Q. Do most men who are hired rustle many, many times? A. As a rule, a man has to rustle from, oh, some of them rustle from two to three months—two weeks to three months, others, good miners, men who have good records and are capable, might get hired the second or third day; but rarely ever the first day does anyone get hired.

Q. Has there been any scarcity of a labor supply in this district for the last four years? A. None for longer than that, since before the depression.

Q. Mr. Bateman, have you, at my request, and in answer to the subpoena, checked the payroll records for the months of June and July, 1935? A. I have; yes, sir.

Q. Have you the result of your findings there? A. I have.

Q. Did you make this check personally? A. Yes, sir.

Q. I am referring now, Mr. Bateman, to the number of men on the payroll on the dates which I will suggest to you. Would you tell the Examiner how many persons were on the payroll of the Phelps Dodge Corporation, Copper Queen Branch, Mines Division, on the 7th day of June, 1935? A. There were 941.

Q. Can you state how many persons were on the payroll on the 14th day of June, 1935? A. There were 917.

*M. A. Bateman—For Respondent—Direct.*

Q. Can you state, Mr. Bateman, how many persons were on the payroll on the 21st day of June, 1935? A. 952.

Q. Will you state, Mr. Bateman, how many persons were on the payroll on the 28th day of June, 1935? A. 986.

Q. Would you state, Mr. Bateman, how many persons were on the payroll on July 3, 1935? A. 996.

Q. Now, Mr. Bateman, referring to the number of men working on given dates, have you made a check of the payroll and your other records to determine that? A. Yes, sir.

Q. Before I ask you that, let me ask you, What was the last full working day prior to June 10, 1935? A. June 7th. The 8th was Saturday and the 9th was Sunday, and we were working on a five-day basis.

Q. How many persons were on the payroll on June 7, 1935, were actually working on June 7, 1935? A. 766.

Q. How many persons, Mr. Bateman, on the payroll on June 21, 1935, were actually working on June 21, 1935? A. 759.

Q. I will ask you, Mr. Bateman, how many persons were working on June 28, 1935? A. 766.

Q. How many persons were working on the third day of July, 1935? A. 808.

Q. Do the figures to which you have referred, with reference to the 21st, 28th of June, and July 3rd, include extra watchmen? A. They do not.

Mr. Persinger: Excuse me a moment. Off the record, Mr. Examiner.

Trial Examiner Kennedy: Off the record.  
(Remarks outside the record.)

Trial Examiner Kennedy: On the record.

Q. (By Mr. Kitchel) Mr. Bateman, can you tell us the number of men working on June 14, 1935? A. I furnished Mr. Persinger with a list of those, but I did not recapitulate that day.

*M. A. Bateman—For Respondent—Cross.*

Mr. Kitchel: I believe that is all, Mr. Examiner.

Trial Examiner Kennedy: Cross examination.

Mr. Kitchel: Take the witness.

Mr. Persinger: Could we have a few minutes' recess?

Trial Examiner Kennedy: We will take a five-minute recess.

You are instructed not to discuss the case with counsel unless both counsel are present.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Kennedy: (After recess) The hearing will be in session.

*Cross examination:*

Q. (By Mr. Persinger) Mr. Bateman, referring to your meeting with Mr. Sharp in Morenci, will you tell us, as nearly as you can, exactly what was said by you and what was said by Mr. Sharp? A. As near as I remember, I said, "Hello, Bill, what are you doing here?"

Q. What did Mr. Sharp say? A. Nothing. I said, "Where did you come from?" He said, "I came up from the Banner," or "the Lovita,"—I don't remember which it was. One of the nearby mines there.

Q. What else was said? A. That is all I recall.

Q. You passed on then? A. I passed on.

Q. And on your way back what did you say, or, who opened the conversation on your way back? Did you speak first? A. I couldn't say; it was just a passing remark, because I was in a rush about something.

Q. Did you stop at all? A. No.

Q. Just kept on walking? A. Just kept on walking.

Q. And Mr. Sharp made no request for employment? A. No, none whatsoever.

Q. Did you make it a point, Mr. Bateman, to notice how



*M. A. Bateman—For Respondent—Cross.*

many pickets were on the line each day during the strike?

A. No, I did not.

Q. Did you make it a point to notice how many pickets were on the line any particular day? A. No, I did not. You see, they only picketed—they picketed two shafts and one is about, I think, nearly a mile from where my office is.

Q. The other shaft entrance, the employees' entrance, would be visible from the porch of your office, would it not?

A. Yes.

Q. But you never stood out there or walked up to the entrance and made a count of the pickets? A. No, I did not.

Q. Did you ever make any particular note of who was on the picket line on the occasions when you may have seen them? A. Yes, I did. I kept track of them.

Q. How did you do that? A. That is, roughly. Well, knowing who they were, watching them leave the line, and so forth.

Q. Did you personally keep track of them? A. Well, it was no duty of mine—no particular duty of mine. I simply did that to drop them from the payroll.

Q. Did you have anyone under you instructed to make an accurate check of who was on the picket line? A. I had no one under me at that time. I was in the office alone.

Q. You were the only person, then, who made any check for your office, at least, of who was on the picket lines? A. Yes.

Q. How did you make a check, or did you make a check, of who was on the picket line, say, at Campbell? A. No, I didn't make that; I didn't have any.

Q. You had no check of that? A. No.

Q. Your only check, then, was at the Junction shaft? A. Yes.

Q. Do you know if all the complainants in this case were on the Junction picket line, or substantially all of them? A. Well, I couldn't say offhand; I might check them and tell you.

*M. A. Bateman—For Respondent—Cross.*

Q. I believe I will ask you to do that. I am showing you the Appendix to the complaint. A. Of course, this would be conjectural. It is a long time ago.

Q. Yes. A. You couldn't expect it to be accurate. I will just check the names of those whom I have seen?

Q. You needn't read the names. Just give me a summary of how many of them, approximately. A. Yes. (Calculating) 23.

Q. 23. You think that is a reasonably accurate estimate? A. I am sure of those 23.

Q. Are you sure that the others were not on the Junction picket line at least most of the time? A. I didn't get you. There was a little disturbance here.

Trial Examiner Kennedy: Read the question, please.

(Whereupon the question was read by the Reporter as above recorded.)

A. Well, I wouldn't want to make that remark, I didn't make a daily check.

Q. Did you make any report to any officials, that is, to the general office, or any particular officials of the company on the activities of the picket line, any regular point? A. No, that wasn't my duty.

Q. Did you make any report to them on the persons whom you recognized on the picket line? A. No.

Q. The only records you made on that were the records on the employment cards? A. Yes. And may I add: All of those were not correct. I had to correct some of those.

Q. How did you go about— A. (Interrupting) There were some men laying off at that time whom we didn't know about, when they were dropped, and those corrections had to be made.

Q. How did you go about making those corrections? A. It was simply noted that they were not involved in the trouble.

*M. A. Bateman—For Respondent—Cross.*

Q. On June 13th, had you received any word from the general offices in Bisbee, or from any official of the company, as to what the company's policy would be, or at that time was, regarding the reinstatement of persons who had struck? A. I don't know exactly whether it was on the 13th or not, but—

Q. When, approximately, did you receive your first information as to what the company's policy regarding reinstatement of strikers was to be? A. Well, it was along sometime during the first week of the strike.

Q. And what was the information you received? A. To go slow on any of the men who had been on the picket lines. That is, to go into—May I correct that? That is, to go slow about reinstating any of the men who had been on the picket lines.

Q. Now, from whom did you receive—Was that an instruction? A. Yes. Well, it was in the way of an instruction, I presume.

Q. From whom did you receive that? A. Mr. Hodgson.

Q. Through any intermediary, or directly from him? A. Directly from him. He came into the office.

Q. Did he discuss with you at any time the possible reinstatement of any of the pickets, any of the strikers? A. No, he did not.

Q. Was that instruction which he gave you ever changed, to your knowledge? A. No, not to my knowledge.

Q. In other words, so far as you know, after the strike was over, that same instruction held good? A. So far as I know; yes, sir.

Q. And that instruction has remained good so long as you remained employment manager? A. It has.

Q. Now, referring to your check of the payroll for June and July, did you make reports on the number of men actively working on each day of the strike to the general offices, or to Mr. Hodgson, or to anyone else? A. No, I had nothing to do with that phase of the business.



*M. A. Bateman—For Respondent—Cross.*

Q. Who would have charge of making such reports, if they had been made? A. I presume the Chief Clerk.

Q. The Chief Clerk. Did you make any regular reports on the number of men you hired each day? A. Yes.

Q. To whom? A. To the general office.

Q. To any particular individual there? A. To the Paymaster. That is, I mailed it to the Paymaster.

Q. How long would you estimate it would take them to receive those reports after you sent them out? A. May I offer an explanation to that question?

Q. Certainly. A. You see, prior to the strike we had been hiring very, very few persons for approximately three years—from 1932 up to the depression. There were occasional fill-ins, and, therefore, we submitted what we call a 15-day report. Every 15 days we would submit a report showing the payroll changes, the entrances and terminations for that period, and placing the date of the transaction in front of the employee's name. Of course, now, when we are hiring regularly, it is the procedure to submit that report daily.

Q. That was the procedure during the strike? A. That was the procedure at the time of the strike.

Q. Was that put in immediately on June 10, the day the strike began? A. The 15th.

Q. June 15th? A. June 15th was the first report.

Q. Would you say that on June 15, 16, 17 and 18, that the general office was up-to-date on the number of employees that had been hired since the strike began, on each of those days? A. Well, figuratively so. The reports probably went in at intervals of two or three days then. We began to speed up after that. The reports had to go in so that the time cards could be mailed out to the various divisions.

Q. And you received definite instructions to keep them up-to-date? A. I don't think anybody instructed me. The matter was entirely in my hands.

*M. A. Bateman—For Respondent—Cross.*

Q. I see. Can you tell me how production in June compared with production in May? A. I could not. I get no production figures whatsoever.

Q. Who would be able to supply that? A. The Chief Clerk, I presume. He compiles the figures.

Q. You have stated that about 941 employees were employed on June 7th. At that time did you know if any of them belonged to the Union? A. Well, that's rather a broad question.

Q. That can be answered either yes or no, I think. A. I surmised that some did; I didn't know.

Q. Did you know any individuals whom you were aware did belong? A. Yes.

Q. About how many individuals did you know were members of the Union on June 7th? A. I could say I was probably sure of 20.

Q. How did you become aware of that? A. Well, they published their names in the papers as officers, and the dates of their elections, and the transactions of their own proceedings.

Q. Other than that, did you ever receive any information concerning who belonged to the Union? A. I did not.

Q. Did you ever request any such information? A. Never did, from anybody.

Q. I believe you have testified that on a number of occasions pickets in front of the employment office would heckle you and heckle the rustlers to some degree, is that correct? A. I did.

Q. Now, did that begin relatively early after the strike was called? A. Well, they were pretty orderly for a few days, as I recall, and it would vary; it went up and down. I think the worst day we have had was along about June 25th. There were several fights there that day, and I didn't see them, but I know they occurred.

Q. That heckling took place occasionally off and on? A. Yes.

*M. A. Bateman—For Respondent—Cross.*

Q. During most of the period of the strike? A. Oh, they would quiet down at times. I remember we had rather a quiet period of probably two weeks, one time. The boys stood around; I didn't say much; they were there; very well behaved; again, as I say, they got boisterous.

Q. Do you know if, prior to August 21st, there had been any conference between the management and the representatives of the Union concerning a possible settlement of the strike? A. I did not.

Q. You were present at no such conference? A. Not that I recall, no. I had nothing to do with that angle.

Q. How many men did you employ on August 21st?

Mr. Kitchel: If you know, Mr. Bateman.

A. 4.

Q. (By Mr. Persinger) 4? A. Well, I really employed 2, and 2 were re-checks, but 4 went on the payroll.

Q. Approximately on how many different days between June 10th and August 24th did you hire men? A. Oh, I could not tell you that accurately; between what dates?

Q. That would be the entire period of the strike. Were you hiring substantially during the day? A. All during June I hired almost every day except Saturdays. Then, by June 28th we had about completed filling the vacancies, and in August hiring was very intermittent; and in looking up the records yesterday, from August 21 to September 9, no one was hired. There was a period of nearly 18 days that nobody was hired, and then I hired one man. He went on, I think I still have the record in my pocket.

Q. In July? A. In July. I couldn't say exactly; I didn't look in July yesterday, and I haven't refreshed my mind.

Q. Now, do you remember exactly what took place each time you hired men during that entire period? A. Well, if there was anything unusual, I did.

Q. Was there anything outstanding on the 21st of August? A. Not as far as my recollection goes.



*M. A. Bateman—For Respondent—Cross.*

Q. Well, how do you fix that date? A. Well, I fixed it by having looked up the records yesterday and knowing that I hired these four men, I readily recall what transpired.

Q. Now, you also have records of having hired various numbers of men during a great many days in June, during a number of days in July. Do you remember exactly what happened on each occasion? A. Well, if the instance was cited to me I might recall it, but I certainly can't recall each day and make an attempt to tell you what happened. That would be absurd.

Q. And the instance of August 21st was cited to you? A. Yes, it was cited to me, and therefore I recall what happened.

Q. When did you cease your position as employment manager? A. August 6, 1937.

Q. At that time, Mr. Bateman, had there been any activity by the C.I.O. around the property of the company?

Mr. Kitchel: I object to that question, Mr. Examiner. August of this year, '37?

Mr. Persinger: Of '37.

Mr. Kitchel: I believe it is irrelevant; it has nothing to do with the period that is in question, 1935.

Mr. Persinger: Mr. Examiner, the theory of the Board has always been to show the continuing of unfair labor practices, and I intend to show that the policy adopted back in 1935 has been continued, with certain variations, up to the present time.

Mr. Kitchel: Does it—

Mr. Persinger: The policy of general interference.

Mr. Kitchel: Does counsel contend he has established such a policy prior to 1937?

Mr. Persinger: Oh, yes.

Mr. Kitchel: I hadn't caught it.

Trial Examiner Kennedy: The objection is overruled.

*M. A. Bateman—For Respondent—Cross.*

Q. (By Mr. Persinger) Was there any C.I.O. activity around the property of the company at or just prior to the time you changed your position from Employment Manager? A. Not to my knowledge.

Q. So far as you know, there had been no passing out of pamphlets or leaflets at the gate? A. Yes, I saw that.

Q. Had you ever received any notice as to what policy the company would adopt in respect to that activity? A. None whatsoever.

Q. And you never knew whether the company had adopted any policy in regard to that? A. I heard nothing about that whatsoever.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: I have no further questions.

*Examination by the Trial Examiner:*

Q. (By Trial Examiner Kennedy) Mr. Bateman, what is your present position with the company? A. Why, for ten weeks I was in Morenci standardizing the employment methods and procedure. Then I spent a month in Douglas, and for the last month I have been engaged in assembling such information and data as was required in the subpoena—that is, that part that pertained to employment statistics only.

Q. Do you now have any title at the present time? A. None whatsoever.

Q. How long did you say you had been with the Company? A. 27 years—that is, with both companies.

Q. With both companies? A. Yes; the C&A and Phelps Dodge.

Q. During that time, to your knowledge, have either of these companies had any contract with any labor organization? A. Not to my knowledge. It has always been an open-shop camp.

*Kobey Kennaugh—For Respondent—Direct.*

Q. That is the policy of the organization? A. I don't know that it is. That is what it has been, an open-shop camp.

Q. You are familiar with the men listed in Appendix A listed in the complaint? A. I am; yes, sir—that is, most of them.

Q. You know their names, and you have them in mind? A. I do.

Q. To your knowledge have any of them ever been requested by the respondent to apply for reinstatement since June, 1935? A. Not to my knowledge.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further. I do not believe we will have any need for this witness now, and I would like to have him permanently excused at this time.

Mr. Persinger: I have nothing further from this witness.

Trial Examiner Kennedy: You are permanently excused. You may remain in the courtroom, if you wish.

(Witness excused.)

Mr. Kitchel: Will you come forward, Mr. Kennaugh, please.

KOBEY KENNAUGH, a witness called by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Kobey Kennaugh.

*Direct examination:*

Q. (By Mr. Kitchel) Mr. Kennaugh, are you employed by the Phelps Dodge Corporation at the present time? A. Yes, sir; I am.



*Kobey Kennaugh—For Respondent—Direct.*

Q. How long have you worked for the company? A. I have worked for the Phelps Dodge Company since June, 1928.

Q. What is your present job with the company? A. I am a sampler for the Phelps Dodge.

Q. Does that work take you underground? A. Yes, sir.

Q. Is the major portion of your time spent underground? A. Yes, sir.

Q. Are you a member of any labor organization at the present time, Mr. Kennaugh? A. I am a member of the Employees' Association.

Q. Do you hold any office in that organization? A. I do.

Q. What office do you hold? A. Secretary.

Q. Can you state the qualification for membership in that organization? A. A man that is employed by the Phelps Dodge Corporation. Any employee is eligible for membership.

Q. Have you made a check recently from your records, from which you could tell us the present membership of that Association? A. I have.

Mr. Persinger: If the Examiner please, I do not quite get the purpose of this, and I do not offhand see its relevancy.

Trial Examiner Kennedy: Maybe you can explain what you are trying to prove.

Mr. Kitchel: At the outset of the hearing this morning, Mr. Examiner, we made a motion to dismiss upon the ground that the Board had absolutely failed to introduce any evidence showing that the failure to reinstate these men had caused or would tend to cause a labor dispute between the company and its employees. That motion was overruled. We therefore feel that the Examiner feels that there is some evidence to that effect in the record, so that the jurisdiction of the Board can be established. If there is

*Kobey Kennaugh—For Respondent—Direct.*

some evidence to that effect, we are now entitled then to show that this alleged failure to reinstate these men has not led to or tended to lead to any labor dispute between the company and its employees.

We expect to show it through this witness and others.

Trial Examiner Kennedy: What have the details of the Employees' Association got to do with that?

Mr. Kitchel: I merely asked him what the qualifications for membership was, and I am now about to ask him the number of members, leading up to the question of whether or not there is any dispute or failure to reinstate these men, which could tend to cause a dispute between the company and its employees.

Trial Examiner Kennedy: Well, I do not see the materiality of it. I will let you proceed, however, if you will strip it down.

Q. (By Mr. Kitchel) What is the present membership?

A. 1,047.

Q. Are they all employees of the Phelps Dodge Corporation at the present time? A. Yes, sir; they are.

Q. Does that number include any persons employed in a supervisory capacity? A. No, sir; it does not.

Q. As Secretary of the Association, Mr. Kennaugh, were you served with a copy of the complaint in this case? A. I was.

Q. Have you read the list of the 48 names that appeared in that? A. I have.

Q. Has any association been engaged since 1935 in meeting and bargaining with the management on behalf of its members? A. There has.

Q. Has the Association at any time requested of the management that the management re-employ any of these 48 men? A. They have not.

*Kobey Kennaugh—For Respondent—Direct:*

Q. Has the failure of the company to re-employ any of these men ever led to a dispute between the Association and the company? A. Would you repeat that, please?

Q. Has the failure of the company to re-employ any of these, or all of these 48 men, ever led to a dispute between the Association and the company? A. It has not.

Trial Examiner Kennedy: Just a minute. Don't answer these questions until they are completed. Have you completed your question?

Mr. Kitchel: I asked you if it has ever led to a dispute between you and the company.

The Witness: It has not.

Trial Examiner Kennedy: Just a minute. I do not think that question is permissible, and I will not permit it to be answered.

Q. (By Mr. Kitchel) You have stated, I believe, that the Association has never requested the reemployment of these men? A. They have not.

Q. Has the matter of the reemployment of any of these men ever been discussed by the membership of the Association? A. It has.

Q. And what is the attitude of the membership of the Association on that proposition? A. The attitude of the membership is that no member of the Association will work with any of these men that walked out or strikers or pickets.

Q. And how many members of the Association did you state there were? A. 1,047.

Q. Has that attitude ever been expressed by the Association to the management? A. It has.

Q. You have stated that you are at present an employee of the Company? A. I am.

Q. Did you work through the strike period? A. I did.

Q. What is your attitude towards the employment of these men? A. I am the same as the members of the Asso-



*Kobey Kennaugh—For Respondent—Cross.*

ciation. I will refuse to work with any man that was on the picket line.

Q. In addition to your position as Secretary of the Association, Mr. Kennaugh, have you occasion to discuss this with individual employees? A. At Association meetings.

Q. Do you feel that you express the attitude and opinion of a number of employees? A. I do.

Q. Why did you state that you will refuse to work with these men? A. Any man that will give the abuse that these men gave to the men that were going through those gates to make their daily living, or any man that will work with a man that will take a rifle and shoot through a car window or blast cars, such as happened, or take little children and take them onto the picket lines and let them hear the profanity those children heard, I do not feel, speaking on behalf of the Association, that I or they can work with these men.

Q. Would you be willing to work with a man with whom you could not cooperate underground? A. I would not.

Q. Why do you state that? A. As any member or any miner knows, you have to put trust in your partner. There is a possibility that your partner could cause an accident which would be classed as an accident and it would really be your partner's fault.

Mr. Kitchel: I believe that is all. Take the witness.

*Cross examination:*

Q. (By Mr. Persinger) Mr. Kennaugh, when certain representatives of the Association requested the management not to re-employ the strikers, what reply did the management make? A. At first, August, 1935, the management did not say yes or no, as given in the minutes of that meeting.

Q. And since that time— A. (Interrupting) They have not given any.

Q. Do you know if there have been any hard feelings between the members of the Employees' Association and

*Kobey Kennaugh—For Respondent—Cross.*

the members of the union prior to the strike? A. There was no ill feeling until the members of the union endeavored to break up meetings of the Association held in the Eagle Hall.

Q. That doesn't answer my question, because I don't know the dates. A. The first meeting was November 15, 1934.

Q. Then prior to the strike there had been ill feeling between the two groups? A. There had been.

Mr. Persinger: No further questions.

Mr. Kitchel: No further questions.

*Examination by the Trial Examiner:*

Q. (By Trial Examiner Kennedy) When was the Association formed? A. The Association's first meeting was November 15, 1934.

Q. Did you state that the foremen belonged to the Association? A. No, no supervisory capacity.

Q. Were you one of the charter members? A. Yes, sir.

Q. How did the Association happen to be formed? A. The men got together for self-protection and formed this Employees' Association.

Q. What do you mean, "self-protection"? A. For working conditions and to secure a collective bargaining agency with the management.

Q. Who suggested the Association? A. John Kraetz, the first President.

Q. Who is he? A. He was the first President of the organization.

Q. Well, is he an employee? A. He is an employee; he is a foreman now.

Q. He is a foreman? A. He is a foreman now.

Q. Now, do I understand that your association will call a strike if necessary? A. They will.

Q. Have they ever done so? A. No, sir.

*Kobey Kennaugh—For Respondent—Cross.*

Q. What would be the basis for calling a strike? A. Re-employing and reinstatement of these men.

Q. That is the only reason they would go on strike? A. That is the only reason they would go on strike.

Q. Is that the only one? A. Yes, sir.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: In order to clear up the record a little bit, I think I should ask one or two further questions.

*Cross examination (Cont'd):*

Q. (By Mr. Persinger) In July, 1934, about the 18th, there was an election held here, was there not, under the auspices of the old Regional Labor Board? A. Yes, sir.

Q. Do you know between what two groups that election was held? A. I do not.

Q. Were you here at that time? A. I was.

Q. Did you vote in that election? A. Yes, sir.

Q. Don't you know what two groups you voted for and against? A. I couldn't say offhand.

Q. Wasn't one an employee-representation plan, and the other the Bisbee Miners' Union, Local No. 30? A. I couldn't say, sir.

Q. Do you remember how the election came out? A. It was very close.

Q. Do you remember who won it? A. By the count of the votes, the representation plan won out.

Q. Didn't the Regional Labor Board certify the union as the winner of the election? A. They did not, as far as I know. I did not hear.

Q. You never heard of that? A. The last I heard, it was in controversy.

Q. And how long after that election was held was it that the Employees' Association was organized? A. The Association was organized in November, 1934.



*Kobey Kennaugh—For Respondent—Redirect.*

Q. Did it have any different membership from that of the old Employee-representation plan? A. It did.

Q. To what extent? A. The representatives were elected by the men at that time.

Q. I mean the membership, the group membership? A. No, it was that every man taken in was a new member. The old representation plan was not.

Q. But were not all of the employees, substantially, who were members of the old plan taken into the Employees' Association? A. No, sir. They had to make application again.

Q. Yes, but they were taken in, were they not? A. If they were accepted by the representatives' Executive Board.

Q. You said the vote at that election was close. Do you remember approximately what percentage of the total number of employees voted? A. I do not.

Q. Do you know whether a great number voted? A. I do not. I was not on the executive Board at that time.

Q. You don't remember much about that election? A. No, sir.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: I have two questions to ask.

*Redirect examination:*

Q. (By Mr. Kitchel) Was Mr. Kraetz, to whom you have referred, a foreman in 1934? A. No, sir; he was not.

Q. Was he employed in any supervisory capacity? A. No, sir.

Q. At that time? A. No, sir.

Q. Mr. Kennaugh, was there any such thing as membership in the Employees' Representation Plan? A. There was no such thing as Employees' Association at that time, and any man that filed out a card for the old employees' representation was considered not in the new organization.

Mr. Persinger: I did not understand that. Will you read that, Mr. Reporter?

*Kobey Kennaugh—For Respondent—Redirect.*

(The answer referred to was read by the Reporter, as set forth above.)

The Witness: They were not accepted, in other words, in the new organization.

Mr. Persinger: Will counsel clear that up? I do not understand the answer.

Mr. Kitchel: May we have this off the record a minute?

Trial Examiner Kennedy: No, keep it on the record. Ask him another question.

Mr. Kitchel: Maybe I had better ask the question again.

Q. Under the old representation plan was there any such thing as membership in the plan? A. No, there was not.

Mr. Kitchel: That is all.

Mr. Persinger: Nothing further.

*Examination by the Trial Examiner:*

Q. (By Trial Examiner Kennedy) Does your Association have regular dues? A. Yes, sir; they do.

Q. Do you have any strike benefits fund? A. No, sir; we do not.

Q. Do you have any contract with the company? A. We have a working agreement with the company—a collective bargaining agreement.

Q. You do? A. Yes, sir.

Q. Of what does that consist? A. That we are the collective bargaining agent at the present time, and that this contract can be terminated within 30 days by either side.

Q. Is it a closed-shop contract? A. No, sir; it is not.

Q. Have you ever applied to the National Labor Relations Board for certification as the bargaining representative? A. Not since I have been Secretary.

Trial Examiner Kennedy: Anything further?

*Kobey Kennaugh—For Respondent—Recross.*

*Recross examination:*

Q. (By Mr. Persinger) Is there any provision in that contract concerning strikes? A. No, sir; there is not.

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Kitchel: Is it about time for recess, Mr. Examiner?

Trial Examiner Kennedy: Yes, just about. We will be in recess until 1:30.

Off the record.

(Remarks outside the record.)

(Thereupon, at 11:50 o'clock a. m., a recess was taken until 1:30 o'clock p. m. of the same date.)

*AFTER RECESS.*

(The hearing was resumed, pursuant to the taking of recess, at 1:30 o'clock p. m.)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger: If the Examiner please, I should like to read into the record the name, dates worked, appearing on a list of employees used as watchmen from June 10 to June 30, 1935, the list having been supplied by respondent in answer to the subpoena. It is the name of Kobey Kennaugh, employed as a watchman June 10, 11 and 30.

Mr. Kitchel: It has now been read into the record, apparently. We object to it upon the grounds it is irrelevant and incompetent, and has no bearing on the issues of this case.

Trial Examiner Kennedy: What is the point, Mr. Persinger?



*Colloquy of Counsel.*

Mr. Persinger: Mr. Kennaugh has taken the stand and shown considerable antagonism to the Union, and I merely want to show that he was used as a watchman, the term generally used to cover all guard duty during the strike.

Trial Examiner Kennedy: Mr. Kennaugh?

Mr. Persinger: He was the Secretary of the Employees' Association.

Trial Examiner Kennedy: He was the last witness?

Mr. Persinger: Yes.

Mr. Kitchel: It seems to me that counsel is just making an assumption that is not justified by any facts at all. That the man is hostile to unions and was used as a guard for that purpose—I suppose that is what he is attempting to establish.

Mr. Persinger: Oh, no; no; merely that he was used as a guard, is now hostile to the Union, and is Secretary of the Employees' Association.

Trial Examiner Kennedy: There is not any dispute about the fact that he was a guard?

Mr. Kitchel: What is the title of that list? "Guard" or "Watchman"?

Mr. Persinger: "Watchman."

Mr. Kitchel: No dispute that he was used as a watchman, but I cannot see that that has any bearing on this.

Trial Examiner Kennedy: Well, the stipulation that the witness was a watchman at the time stated by Board's counsel will be received in evidence, and that is all that will be received.

Mr. Persinger: If the Examiner please, I have gone through the previous transcript and have made the following analysis of the testimony as given by Mr. Dougherty:

*Colloquy of Counsel.*

That he was last employed in 1934;

That during the period of the strike he was in the town of Bisbee, but not on the picket line;

That he applied for work in January, 1937;

That at that time Mr. Bateman said, "If there is any opening at the Cole, I'll send you over there;"

That about January 15, 1937, Mr. Dougherty was in the rustling line outside the office;

That Mr. Bateman called him into the office;

That he was sent to the doctor for physical examination, and later to the dispensary to be X-rayed. At the dispensary he was told to return to the Employment Office the next day;

That the next day he returned and spoke to Mr. Bateman;

That Mr. Bateman said, "I can't send you out there; some men said you called them 'scabs,' and I want no trouble;

That Dougherty left at that time and returned a few days later and asked Mr. Bateman, who had said that he had called them 'scabs';

That Mr. Bateman replied, "I don't think I have to tell you that."

That Mr. Dougherty said, "I was not on the picket line."

That Mr. Bateman said, "There is no use for your coming on for more work."

On cross examination was brought out the details of his previous employment record;

That he was not a Union member, and during most of 1934, or any of 1935, he had not attended the meetings of the Union other than the meeting at which he joined, and no other meetings;

That he was not on the picket line;

That he denied, under questioning, that he had been rejected by the examining physician, and stated

*Colloquy of Counsel.*

that since October 15, 1934, when his employment with respondent ceased, he has had only WPA work.

That is the record of the testimony of Mr. Dougherty.

**Trial Examiner Kennedy:** What is your position on the motion of counsel for the respondent to dismiss as to Mr. Dougherty?

**Mr. Persinger:** On the testimony of Mr. Dougherty, there is evidence that he was refused employment solely because some men said that he had called them "scabs". Whether or not he was actually on the picket line, or whether Mr. Bateman ~~knew~~ that he was on the picket line, is not shown in that testimony. From the statement by Mr. Bateman that he couldn't employ him because he had called some men "scabs," it is necessary to presume that Mr. Bateman assumed that he was active during the strike, and turned him down for that reason.

There has been further testimony, of course, since the respondent's case began.

**Trial Examiner Kennedy:** Well, I am not considering that.

**Mr. Persinger:** On the record of Mr. Dougherty, I think there is evidence that he was refused reinstatement because of assumed activities during the strike.

**Trial Examiner Kennedy:** Well, it is my feeling that the testimony as to Mr. Dougherty is very weak. I will reserve ruling until the respondent's case has been completed.

**Mr. Persinger:** The testimony of Richard Johnson was to the effect that he had never worked at any time for the respondent; that he applied for work frequently during the months of January, February and March, 1936; that his father and brother were formerly employees of the respondent; that in January he spoke with Mr. Bateman and Mr. Bateman told



*Colloquy of Counsel.*

him that his father and brother were not in good standing with the company, and there would be no chance of Richard Johnson obtaining employment.

He continued to rustle for three months. He spoke to Mr. Bateman in March. At that time Mr. Bateman said, "I thought we had this out once before." Johnson replied, "I thought maybe if I kept rustling there would be a chance. I have never worked here."

Mr. Bateman said, "There is no chance."

Mr. Johnson is now employed at the Shattuck Denn, and was first employed there on April 9, 1936; he did not belong to the union until he was employed at the Shattuck Denn, and he took no part in the strike because he was not even in town during the strike.

I think, on the strength of that evidence, of the statements of Mr. Bateman, that he could not employ him, would not employ him, because his brother and his father were not in good standing with the company, is sufficient to deny the motion to dismiss.

Trial Examiner Kennedy: That is Richard Johnson?

Mr. Persinger: That is Richard Johnson.

Trial Examiner Kennedy: He has never been employed by the respondent?

Mr. Persinger: At no time.

Trial Examiner Kennedy: Was your position on the point that never having been an employee the Board is estopped from giving him any relief?

Mr. Persinger: The Board is estopped from giving any relief, but not from issuing a cease and desist order to employ him later.

Trial Examiner Kennedy: The motion will be denied as to Richard Johnson.

Proceed.

*T. J. Rescola—For Respondent—Direct.*

T. J. RESCOLA, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your name, please?

The Witness: T. J. Rescola.

*Direct examination:*

Q. (By Mr. Evans) Are you an employee of the Phelps Dodge Corporation at the present time, Mr. Rescola? A. Yes, sir.

Q. Where are you employed? A. Campbell shaft.

Q. Were you an employee during the year 1935? A. Yes, sir.

Q. Where were you employed at that time? A. Campbell shaft.

Q. Did you work during the period of the walk-out and picketing? A. Yes, sir.

Q. In that year? A. Yes, sir.

Q. I will ask you, Mr. Rescola, if any of the men who were on the picket line or walked out in June, 1935, were put back to work, would you have been willing to work with them? A. No, sir.

Q. Why not? A. Because they abused us too much on the line.

Q. Any other reason? A. Yes, sir.

Q. What other reasons, if any? A. Well, because I don't think they would be safe to work with.

Q. Can you state what the attitude of the other employees working for the company at the present time is with respect to working there with these men? A. They say they will not work with them.

Q. And how do you know that to be their attitude? A. Because I meet the men up and down the shaft and I hear them talking.

*T. J. Rescola—For Respondent—Direct.*

Q. You do what all the time? A. I meet the men up and down the shaft all the time, and I hear the men talking.

Q. And has the failure on the part of the company to employ any of the men who walked out in June, 1935, or who were on the picket line, led or tended to lead to any dispute between the company and its employees?

Mr. Persinger: Just a moment. I object to the question on the ground that it is immaterial and calls for the conclusion of the law from this witness.

Trial Examiner Kennedy: Yes, it will be sustained on that ground.

Mr. Evans: If the Examiner please, it is our position that this witness, as well as other witnesses whom we are ready to produce, may testify as to whether any dispute existed, or might exist, between the company and the employees over the question of hiring these men.

Under the provisions of the Act the Board has jurisdiction to prevent any alleged unfair labor practice which might affect commerce, and under the provisions of the Act the term "affecting commerce" is defined as leading or tending to lead to a labor dispute which might affect commerce.

Now, this witness, as well as others whom we are in a position to produce, may certainly testify as to whether the employees of the company have any dispute with the management over the employment of these men, or whether it would tend to lead to a dispute.

Trial Examiner Kennedy: Just a minute, counsel. I don't think you need to argue this thing extensively. The objection is made, as I understand it, to the use of the term "labor dispute," which is a term used in the Act, and that this witness has not been qualified to give us an expert opinion on whether or not that situation has arisen.



*T. J. Rescola—For Respondent—Direct.*

Mr. Persinger: If the Examiner please, there is a second point. Who are the employees of the company at this time is what the whole case is about, really, and certainly this witness can't answer the question.

Trial Examiner Kennedy: Well, I sustained the objection on the ground this witness is not qualified to give us his opinion on that point.

Mr. Evans: In that connection, Mr. Examiner, I point out that I did not ask the witness whether it would tend to lead to any labor dispute.

Trial Examiner Kennedy: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter, as set forth above.)

Trial Examiner Kennedy: I think that calls for the conclusion. You can establish facts by a witness of this type; but in using that term "dispute," in my opinion, it would be asking him for a conclusion under the terms of the Act.

Q. Well, Mr. Rescola, have you or any of the employees who are now working for the company, ever sought to have the men who were on the picket line re-employed by the company? A. I don't just get what you are talking about.

Trial Examiner Kennedy: Read the question.

(The question referred to was read by the Reporter as set forth above.)

The Witness: No, sir.

Trial Examiner Kennedy: Speak out your answer.

The Witness: No, sir.

Q. (By Mr. Evans) Would you object to their being re-employed? A. Yes, sir.

Q. Can you state whether or not that is the attitude of the employees who are now working for the company? A. Yes, sir, that is.

*T. J. Rescola—For Respondent—Direct.*

Q. Can you state whether or not if the company put these men back to work, a dispute or controversy would be apt to exist between the men now working for the company and the company regarding their reinstatement? A. Yes, sir.

Mr. Persinger: I object to that wording, Mr. Examiner.

Trial Examiner Kennedy: Yes. The objection is sustained. The answer will be stricken. Don't answer these questions until you give counsel an opportunity to object.

Mr. Evans: Mr. Trial Examiner, the word—

Trial Examiner Kennedy: Now, counsel, we are not arguing all of these rulings. You automatically get your exception. Now, let's proceed.

Mr. Evans: That is all, Mr. Examiner.

Trial Examiner Kennedy: Cross examine.

Mr. Persinger: No questions.

*Examination by the Trial Examiner:*

Q. (By Trial Examiner Kennedy) Did you ever belong to a union? A. Yes, sir.

Q. What union? A. Bisbee No. 30, International Union of Mine, Mill and Smelter Workers.

Q. When did you join that union? A. Oh, I would say 1934.

Q. Are you still a member of it? A. No, sir.

Q. When did you drop out? A. The same year that I joined.

Q. A little louder; I didn't hear that. A. The same year that I joined.

Q. 1934? A. Yes, sir.

Q. Have you belonged to a union since that time? A. No, sir; the representative plan.

Q. You are in that? A. Yes.

*T. J. Rescola—For Respondent—Direct.*

Q. Are you in any such organization now? A. I am a representative of the employees.

Q. Do you consider that a union? A. Yes, sir.

Q. You said that you were afraid, or, that you didn't want abuse, or something of that sort. Will you tell me what you mean by that? A. What do you mean?

Q. You used the term "abuse," in regard to these men who went on strike. A. Well, we were going down there; instead of asking us to come with them they demanded us to come with them.

Q. Where was this? A. At the strike down there.

Q. When? A. During the strike of 1935.

Q. What do you mean by that, "they demanded you"? A. Instead of asking us, they demanded us to come.

Q. I don't understand what you mean by "come"? A. Well, to come out with them.

Q. Oh,—to go out on strike? A. Yes.

Q. And you consider that abusive? A. I think if they had talked like we were white people instead of "yellow dogs," like they called us, we might have considered them more; but they used all profane language and "yellow dogs," and things like that, and that's what I call "abuse."

Q. Were those remarks addressed to you personally? A. Yes, sir; they were.

Q. By whom? A. By the whole bunch. I could pick out two or three.

Q. The whole crowd? A. Yes, sir.

Q. How often? A. Oh, every day, twice a day, for five days a week.

Q. For how long? A. For two months, two weeks and two days.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: No questions.

Mr. Evans: Nothing further.



*H. L. Cunningham—For Respondent—Direct.*

Trial Examiner Kennedy: That is all. You are excused.

(Witness excused.)

Mr. Evans: Mr. Cunningham. Will you take the stand, please.

H. L. CUNNINGHAM, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your name, please?

The Witness: H. L. Cunningham.

*Direct examination:*

Q. (By Mr. Evans) Are you employed by Phelps Dodge Corporation at the present time, Mr. Cunningham? A. I am.

Q. Where are you employed? A. At the Campbell shaft.

Q. What as? A. At the present time I am tap lagging.

Q. Were you employed during the year 1935? A. I was.

Q. Where at? A. The Campbell shaft.

Q. What was your job at that time? A. I was caging at that time.

Q. Did you work during the period of the walkout and picketing? A. I did.

Q. Mr. Cunningham, if any of the men who walked out in June, 1935, or were on the picket line during that period, had been put back to work, or were put back to work, what would your attitude be with respect to working with them? A. I would refuse to work with them.

Q. Why? A. Because they refused to work with us, and we consider they are not safe to work with. The attitude they showed toward us during the trouble—

Q. What attitude do you refer to? A. By abusing us; calling us names that I don't care to mention; hollering and carrying on with us, threatening us.

*H. L. Cunningham—For Respondent—Direct.*

Q. Anything else? A. Well, I was stopped one night, supposed to get a licking, but I stopped it.

Q. Who stopped you? A. Well, the law, apprehended at the end of the trouble, had taken charge of it themselves.

Q. Any other reason why you wouldn't want to work with these men? A. Well, none in particular that I know of.

Q. Do you know what the attitude of the rest of the men now employed by the company is in this respect? A. Well, the men that I work with daily have the same attitude towards them that I do.

Q. Do you know why they have that attitude? A. Well, for the same reason that I give myself.

Q. Have you or the men that you work with ever requested the company to put these men back to work? A. No, we haven't.

Q. Has the failure of the company to put them back to work occasioned any controversy with the men now working?

Mr. Persinger: I object to that, Mr. Examiner, as calling for a conclusion.

Trial Examiner Kennedy: Sustained.

Q. (By Mr. Evans) Would a controversy develop between the company and the men now working if these men were put back to work, in your opinion? A. It would.

Mr. Persinger: I object upon the same grounds.

Trial Examiner Kennedy: Sustained. The answer will be stricken.

Don't answer until you give counsel an opportunity to object.

The Witness: All right, sir.

Q. (By Mr. Evans) What would the attitude of the men be if these men were put back to work?

*H. L. Cunningham—For Respondent—Cross.*

Mr. Persinger: That clearly calls for a conclusion. I object to it.

Trial Examiner Kennedy: Well, you may limit that to what his attitude would be.

Mr. Evans: Mr. Examiner, if we have to put on all of the men now in the employ of the company, we will do so. Here is a man who is working with them. We are attempting just to put on a cross-section of the men, with the idea of expediting the hearing.

Trial Examiner Kennedy: Allow me to suggest, counsel, if you have more cumulative evidence, that you offer to prove by so many witnesses the same testimony, or substantially the same, as this witness has testified to, and get that in the record that way. I am certainly not going to favor a whole parade of witnesses just to testify to that fact.

Mr. Evans: Well, I concur heartily with the view of the Examiner on that.

Q. What would your attitude be if these men were to be put back to work? A. Well, my attitude would be that there would be trouble.

Mr. Evans: You may take the witness.

*Cross examination:*

Q. (By Mr. Persinger) Mr. Cunningham, have you been in the courtroom at any time during this proceeding? A. Well, I was in here Monday afternoon just after court taken up, and then I heard Mr. Jack Fisher's testimony, and then I had to go and prepare myself for night shift.

Q. What was your job during the time of the strike? A. When the strike taken place?

Q. During the time that there was a picket line. A. Well, I was put on guard duty.

Mr. Persinger: That is all.



*H. L. Cunningham—For Respondent—Redirect—Recross.*

*Redirect examination:*

Q. (By Mr. Evans) How many days were you on watching or guard duty? A. It was either 10 days or two weeks, I don't remember just which.

Q. And where was that? A. At the Campbell shaft.

Q. And were you also working at that time underground? A. I was, yes.

Q. What did your guard duties consist of? A. Two hours in the morning and two hours in the afternoon when they changed shifts, and two hours in the evening when the night shift went on.

Mr. Evans: That is all.

*Recross examination:*

Q. (By Mr. Persinger) Did you carry any arms? A. I did, on the job.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Evans: No.

*Examination by the Trial Examiner:*

Q. (By Trial Examiner Kennedy) Have you been subject to any abuse since the strike by any of the strikers? A. Since the strike has been ended?

Q. Yes. A. No.

Q. Have you ever gone through a strike before? A. No, but I was raised around quite a bit of labor trouble in the coal fields in the State of Kentucky.

Q. To your knowledge, does a certain amount of ill feeling result during a strike? A. Well, more or less, yes.

Q. And after the strike is over, those feelings cool down a little bit, don't they? A. Quite a bit, yes.

Q. Now, you say if these men were returned to work, you would be looking for trouble, is that what you said? A. Well, yes, there would be trouble.

*Homer Brinkman—For Respondent—Direct.*

Q. Why would there be trouble? A. Well, because we don't intend to take what we took once before.

Q. What do you mean by that? A. I don't intend to be abused as we was once before on labor trouble of that kind.

Q. What makes you think you would be abused again? A. Well, if we were to have a strike, we would be.

Q. Well, if there was no strike? A. Well, our organization would just absolutely refuse to work with them if they were put back to work.

Q. What would your organization do? A. We would come out on a strike ourselves.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Mr. Evans: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

HOMER BRINKMAN, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Homer Brinkman.

*Direct examination:*

Q. (By Mr. Evans) What is your name? A. Homer Brinkman.

Q. You are employed by the Phelps Dodge Corporation at the present time? A. Yes, sir.

Q. Where are you employed? A. At the Campbell shaft, Division B.

Q. Were you employed there during the year 1935? A. Yes, sir.

*Homer Brinkman—For Respondent—Direct.*

Q. And did you work during the period of the walk-out and picketing? A. Yes, sir.

Q. That occurred at that time? A. Yes, sir.

Q. Mr. Brinkman, if the men who were on the picket line and walked out at that time were put back to work, what would your attitude be with respect to working with them?

A. There would be no working with them?

Q. And why do you feel that way? A. I wouldn't trust them.

Q. Why wouldn't you trust them? A. It wouldn't be safe.

Q. Why do you say you wouldn't trust them, Mr. Brinkman? A. Would you like to go through a picket line and be called everything but your name?

Trial Examiner Kennedy: Now, Mr. Witness, you are not here to ask questions. You answer the questions.

Do you understand that?

The Witness: I beg your pardon.

Trial Examiner Kennedy: The statement is stricken from the record. Read the question, Mr. Reporter.

(The question referred to was read by the Reporter, as set forth above.)

The Witness: It was because it wouldn't be safe to work with them.

Q. (By Mr. Evans) Well, now, Mr. Brinkman, I want to find out why you feel that way. Why do you think it wouldn't be safe to work with them? What, if anything, has caused you to think that? A. Because I wasn't on their side. I opposed their views of things, conditions, working conditions, and so forth.

Q. Anything else that caused you to feel that way toward them? A. Yes.

Q. What, if anything? A. Being threatened, being called vile names and so forth, if you know what I mean.



*Homer Brinkman—For Respondent—Cross.*

Q. Were you ever threatened by any of these men who walked out or were on the picket line? A. I was chased about 10 miles by some of them.

Q. When did that happen? A. Well, I couldn't say the date, but it was shortly after the strike was called.

Q. Now, you say that one of the reasons you wouldn't want to work with them was because of the abuse. What do you mean by that—by "abuse"? A. Well, I wouldn't feel safe to work under them.

Q. No, I am asking you what you mean by "abuse." You say you were subjected to abuse at their hands. A. Well, I was abused by, you might say, going through their lines, being called different names. That is in the nature of abuse.

Q. And what were you called? A. I was called a yellow dog, a rat and a frog son-of-a-bitch.

Q. Did that occur frequently during the period of the walkout? A. Oh, I don't know. I couldn't memorize the times, but often enough.

Q. If you know, can you state what the attitude of the other men working at the present time is as to working with the men who walked out or were on the picket line? A. Well, to those that I have talked to, and have been working with, they have the same attitude towards them as I have.

Q. And do you know why they have that attitude? A. I didn't hear them express themselves, only the same as I am.

Q. What would your attitude be if these men were put back to work? A. There wouldn't be any work.

Q. What do you mean by that? A. Well, I wouldn't work with them.

Mr. Evans: You may take the witness.  
*Cross examination:*

Q. (By Mr. Persinger) Mr. Brinkman, who asked you to come up here today and testify? A. Nobody asked me; I was informed to call at Mr. Henrie's office.

*Homer Brinkman—For Respondent—Cross.*

Q. Who told you? A. Then I was told to come up here at 1:00 o'clock.

Q. Who told you to call at Mr. Henrie's office? A. My foreman.

Q. And who told you to come up here at 1:30? A. Mr. Evans.

Q. Have you talked over with anyone the testimony you were to give on the stand? A. No, sir; that is—what do you mean?

Q. Well, of course, you have talked to Mr. Evans, but have you talked to anyone else? A. No, sir.

Q. Did you talk to Mr. Henrie? A. No, sir.

Q. Or to your foreman? A. No, sir.

Q. How did your foreman find out that you had anything to say that would have any bearing on this case? A. No, sir.

Trial Examiner Kennedy: Read the question.

(The question referred to was read by the Reporter, as set forth above.)

The Witness: How did he find out? Well, I worked during the trouble, that is how he probably knew.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Evans: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Trial Examiner Kennedy: Now, counsel, can't you stipulate as to any further cumulative evidence?

Mr. Persinger: I have already offered to stipulate, although we haven't settled it definitely.

Mr. Evans: May we have about a five-minute recess?

Trial Examiner Kennedy: Yes. I don't care to hear much more of this cumulative evidence. I will take it for granted that other witnesses would testify the same as these men have along that line. I don't

*G. G. Alexander—For Respondent—Direct.*

see that the record is being helped by any more cumulative evidence.

Mr. Evans: Yes, it is all cumulative.

Trial Examiner Kennedy: I beg your pardon?

Mr. Evans: It is all cumulative.

Trial Examiner Kennedy: Yes. Let us recess for 10 minutes and see if we cannot get some understanding about that.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Evans: Mr. Alexander, will you take the stand, please.

G. G. ALEXANDER, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your name, please.

The Witness: G. G. Alexander.

*Direct examination:*

Q. (By Mr. Evans) Are you employed by Phelps Dodge Corporation at the present time, Mr. Alexander? A. Yes, sir.

Q. Where are you employed? A. At the Campbell shaft.

Q. Were you employed at the Campbell shaft during the period of the walkout and picketing? A. I was.

Q. What is your attitude with respect to working with the men who went out on strike and who were on the picket line? A. I don't think we could cooperate.

Q. What do you mean by that? A. Get along.

Q. Do you usually work with others underground? A. Your partner, yes; sometimes three or more.



*G. G. Alexander—For Respondent—Cross.*

Q. Is it necessary that you get along underground and cooperate on the job? A. Absolutely.

Q. Why? A. Well, to make a showing, and do your work proper, and make it easier on yourself, as well as your partner, you have to work together and cooperate to get anywhere.

Q. Why do you say that you do not think you would be able to cooperate or work with them? A. Well, during the strike we were called a good many dirty names, and we were requested to let them pass, not to talk back, not to cause any trouble.

Q. What is the attitude of the other men on the job towards these fellows? A. As far as I know, it is the same as mine—that is, the old ones that went through the strike. The new fellows that was hired after the strike, I couldn't say.

Q. Have you or any of the men you have ever worked with, ever requested that these men be put back to work? A. Absolutely not.

Q. Do you want them put back to work? A. No, sir.

Mr. Evans: I think that is all.

Trial Examiner Kennedy: Just a minute.

*Cross examination:*

Q. (By Mr. Persinger) Mr. Alexander, what is your job at the present time? A. Timberman.

Q. Timberman? A. Yes.

Q. And how many men do you work with? A. Sometimes only one, sometimes three or four.

Q. And during the course of a day's work, do you come in contact with men doing other jobs in the mine? A. Well, more or less.

Q. Would you have to be able to cooperate with them when you are not working with them, just see them occasionally? A. Well, yes.

*G. G. Alexander—For Respondent—Cross.*

Q. Why? A. Well, you couldn't have ill feelings underground. You don't have to cooperate with them if you are not working with them. You could go off somewhere and leave them alone, but it is best to have perfect agreement underground.

Q. What shaft do you work in? A. Campbell shaft.

Q. Is every man in the Campbell shaft a personal friend of yours? A. Yes, I look at them that way.

Q. There is no man in the shaft that you don't like? A. I haven't an ill feeling towards any man, I am glad to say.

Q. Have you been in the hearing room at any time during the course of this proceeding? A. Yes.

Q. When? A. Monday and Tuesday afternoons.

Q. Afternoons in both cases? A. Yes, for a very short time.

Q. About how long a time? A. An hour.

Q. Do you remember whose testimony you heard? A. I was here when Pete Cornett and Bethel gave their testimony.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Evans: Nothing further.

*Examination by The Trial Examiner:*

Q. (By Trial Examiner Kennedy) There are about a thousand men working in that mine at the present time, aren't there? A. Not at the Campbell shaft.

Q. How many are working at the Campbell shaft? A. I will say approximately 300 full shifts.

Q. You don't have any ill feeling toward any of these men? A. No, I don't.

Q. Do you think you are a hard man to get along with? A. Very easy.

Q. Very easy? A. Yes.

*Colloquy of Counsel.*

Q. Do you make it a practice to hold grudges against men? A. I try not to.

Q. Don't you think two years is a long time to hold a grudge? A. Not under the circumstances.

Q. You don't? A. No, sir.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Mr. Evans: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Evans: Mr. Trial Examiner, with the consent of counsel for the Board, we wish to stipulate, for the purpose of avoiding more or less repetition of testimony, that we would proceed, if necessary, to put on testimony of some seven or eight hundred men now employed by the Phelps Dodge Corporation substantially to the effect of the testimony given by the witnesses called since the noon recess. That would be to the general effect that they do not want to work with these men who went out on the strike in June of 1935, or were on the picket line, because of the abuse, threats, and general ill feeling that was engendered at that time, and because they do not feel it either safe or desirable to work with them in the occupations in which they were engaged.

In some cases, for the further reason that they do not feel that they would be able to cooperate with them on the job, obtain the necessary cooperation which is required underground where men are working together; and further, that that expresses the attitude generally of the men in the employ of the Phelps Dodge Corporation at the present time, that



*Colloquy of Counsel.*

they have not requested the management to reinstate any of these men or employ them, and are not desirous that they do be employed.

Mr. Persinger: So stipulated,

Trial Examiner Kennedy: Is it my understanding that all of those witnesses, if called, would be presently employed by the Phelps Dodge Corporation?

Mr. Evans: That is correct.

Trial Examiner Kennedy: And none of them would belong to the union of which the complaining witnesses belong?

Mr. Evans: At the present time. Many of them, I think, at one time or another were members of that union.

Trial Examiner Kennedy: But are not now.

That stipulation is received.

The hearing will be in recess until 7:00 o'clock this evening.

(Thereupon, at 2:30 o'clock p. m., a recess was taken until 7:00 o'clock p. m. of the same date.)

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*AFTER RECESS.*

(The hearing was resumed, pursuant to recess, at 7:00 o'clock p. m.)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Kitchel: Mr. Examiner, counsel has agreed to stipulate that the Inspiration Mining Company which has been referred to in the testimony in this case during the past year produced the second largest amount of copper of any of the operating mines in this state and, in addition, that the rate of pay of the Inspiration Mine follows the same lines as that of the Copper Queen Branch, Mines Division, of the respondent.

*Cy Cornett—For Respondent—Direct.*

Mr. Persinger: So stipulated.

Trial Examiner Kennedy: All spectators understand the rule, that if you are in the room while the others are testifying you will not be permitted to testify.

CY CORNETT, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name?

The Witness: Cy Cornett.

*Direct examination:*

Q. (By Mr. Kitchel) Mr. Cornett, are you at present employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. Have you ever been employed by the Sunshine Mining Company? A. Yes, sir.

Q. And where is that located, Mr. Cornett? A. At Kellogg, Idaho.

Q. What was the last period of time during which you were employed at the Sunshine Mining Company? A. I don't remember just the exact date, but it was '27 some time when I left.

Q. In '27? A. Yes.

Q. Or '37? A. '37, rather.

Q. And how long were you employed before you left Kellogg? A. About 18 months.

Q. What job did you have with the Sunshine Mining Company? A. I was a jigger boss in a shaft, the Jewel shaft.

Q. Are you more or less familiar with underground conditions? A. I never worked underground. I worked in the shaft all the time I was there.

*Cy Cornett—For Respondent—Cross.*

Q. Are you acquainted with the type of mining that is engaged in at that mine? A. Yes.

Q. How many employees were there at the Sunshine Mining Company—I will ask you to give only a rough estimate—at the time you were employed there? A. I would say, somewhere between 400 and 600.

Q. Do you know whether or not since that time that number has increased? A. I wouldn't know since I left.

Q. What was the rate of pay there for a miner at the time you were working at the Sunshine? A. If I remember right, it was \$5.75.

Q. Are you familiar with the type of work done by miners and muckers in the mines here with the Phelps Dodge Corporation? A. I am.

Q. Would you say that that type of work is the same as that done by the men at the Sunshine Mining Company? A. Yes.

Q. Is the Sunshine Mining Company a substantially large producer? A. I understand that it is one of the largest producers in the United States.

Mr. Kitchel: That is all.

*Cross examination:*

Q. (By Mr. Persinger) Mr. Cornett, was the rate of pay for miners \$5.75 when you first went to the Sunshine? A. I went to work in the shaft when I first went up there, and I went to work at \$6.20, and I don't know exactly what the miners' pay were. That is merely an estimate.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: Nothing further.

*Examination by the Trial Examiner:*

Q. (By Trial Examiner Kennedy) Where are you now employed? A. Pardon me?



*Heber Bambrick—For Respondent—Direct.*

Q. Where are you now employed? A. At the Sac shaft, for the Queen.

Q. The Phelps Dodge Corporation? A. Yes.

Q. Do you belong to the union? A. No.

Trial Examiner Kennedy: That is all.  
You are excused.

(Witness excused.)

Mr. Kitchel: Mr. Bambrick, will you come forward, please?

HEBER BAMBRICK, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Heber Bambrick.

*Direct examination:*

Q. (By Mr. Kitchel) Mr. Bambrick, are you employed at the present time by the Phelps Dodge Corporation? A. I am.

Q. Have you ever been employed at the Climax Molybdenum Mine? A. I was.

Q. Where is that located? A. At Climax, Colorado, 13 miles north of Leadville.

Q. How long ago did you work there? A. I left there in November the 1st, this last year.

Q. Of 1937? A. Right.

Q. How long were you there, Mr. Bambrick? A. I went in there in November, 1936.

Q. What was your job with the Climax Molybdenum Company? A. Junior Engineer underground.

Q. Was the major portion of your working time spent underground? A. Until February, 1937, yes, all the time.

*Heber Bambrick—For Respondent—Direct.*

Q. Can you state what the rate of pay for a miner at the Climax Molybdenum was at the time you were there?

A. The rate of pay has been increasing for the past year steadily. It was \$5, I believe, at the time I started there, and today it is in excess of \$6.

Q. To your knowledge, is the operation of that mine a steady proposition? A. Yes, decidedly.

Q. Can you give any reasons why you make that statement? A. Climax Molybdenum Company has not been able to catch up in its orders for five years. The demand exceeds the supply; or, rather, the demand exceeds the rate of production.

Q. At the time you were working there, Mr. Bambrick, what was the approximate number of employees on the payroll? A. In the vicinity of a thousand.

Q. Are you familiar with the type of job that a miner or a mucker would have working here in the Copper Queen Branch, Mines Division, of Phelps Dodge? A. Yes.

Q. Would you say that the type of work done by a man classified as a miner or mucker at the Climax Molybdenum would be substantially the same? A. Yes, substantially.

Q. Is the Climax Molybdenum Company the only company operating the Climax in Colorado? A. In Climax, yes. The only thing there is the mine.

Mr. Kitchel: That is all.

Mr. Persinger: No questions.

*Examination by the Trial Examiner:*

Q. (By Trial Examiner Kennedy) Where are you now employed, Mr. Bambrick? A. Phelps Dodge Corporation, at the Junction shaft.

Q. In what capacity? A. Mucker.

Q. Do you belong to the union? A. No, sir.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

*A. C. Reifsnider—For Respondent—Direct.*

Mr. Kitchel: May both of these witnesses be dismissed, Mr. Examiner?

Trial Examiner Kennedy: Yes, that is understood, unless counsel state otherwise.

A. C. REIFSNIDER, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

*Direct examination:*

Q. (By Mr. Kitchel) Mr. Reifsnider, are you presently employed by the Phelps Dodge Corporation? A. Yes, I am.

Q. What is your present position with the company? A. Master Mechanic.

Q. At the Mines Division? A. Yes, Mines Division.

Q. Were you employed at that position during the years 1931 to date? A. Yes.

Q. Are you acquainted with Mr. H. J. Montgomery? A. Yes, I am.

Q. As Master Mechanic, Mr. Reifsnider, do you supervise all of the surface operations of the Mines Division? A. Yes, practically, the mechanical work, surface labor and watchman.

Q. You have stated, I believe, that you are acquainted with Mr. H. J. Montgomery? A. Yes.

Q. Did he come under your jurisdiction at any time in 1931? A. Yes. At the time the operations at the concentrator ceased in the latter part of '31, Montgomery came over to the Mechanical Department, and at that time, in order to look after the property—that is, the concentrator, which was idle, he was assigned there as a resident watchman.

Q. Did he live there at the concentrator? A. Yes. By that I mean he was provided living quarters and lights, water and fuel. He lived there on the property to look after it.



*A. C. Reifsnider—For Respondent—Direct.*

Q. How long did he stay there? A. Well, he wasn't there but a few months.

Q. What was your experience with Mr. Montgomery on that job? A. Well, the difficulty with Montgomery there was he spent too much time away from the job. His duty there was simply to spend his time there and look after the property, but he was inclined to leave the place. In fact, he went up to Warren several times and, I believe, worked on some property he had up there. He was cautioned about leaving the property and, of course, he said he wouldn't leave. But he would leave during the night and would come in during the night late, as well as being away in the daytime.

Q. Was he ever given permission to leave his job? A. No.

Q. After he served two or three months as watchman there, was he transferred? A. Yes, for that reason. He wasn't taking care of the job there. But in view of the long service he had with the company he was taken to one of the mine change rooms and made a change-room attendant.

Q. How long did he stay on that job? A. That was again a matter of some months, and, the same difficulty—well, not the same difficulty, but he wasn't giving satisfaction, and, instead of taking care of the work assigned to him, he preferred, rather, to argue with the boss than to do what he was told. So he was cautioned again about his attitude, and at that time he was moved to the boiler shop as a boiler-maker's helper.

Q. How long did he stay on that job?

Trial Examiner Kennedy: Just a minute. I would like to have the personnel record of this man that you are testifying about.

Mr. Kitchel: I can give you a copy of it here, Mr. Examiner. This is a copy of the record, which was put in evidence.

Trial Examiner Kennedy: Very well, proceed.

*A. C. Reifsnider—For Respondent—Direct.*

Q. (By Mr. Kitchel) How long did he stay in that job in the boiler shop? A. I don't remember just the month, or even the year, that he went into the boiler shop, but we had largely the same trouble with Montgomery there—that is, his indifference—his indifferent attitude toward his job. He was a fluent talker and inclined to spend more time talking with other men than taking care of his work. So he was cautioned about that again. Then along in July of '34 he was even outside of the shop and talking to gangs working outside. At that time Montgomery was discharged.

Q. Was he warned before that discharge? A. Yes. He had been warned about leaving his work and spending his time talking.

Q. After that discharge, Mr. Reifsnider, did he return to the employ of the company? A. Yes, he did. He came to me and talked to me about it, but I told him that after the warnings that he had had that I couldn't see that he was entitled to return to work. So he went to see Mr. Henrie, and Mr. Henrie thought that he should be given still another chance.

Q. Was he reinstated? A. So he was reinstated after a penalty of a lay-off. I don't remember whether it was 15 days or 30 days, but it was a penalty.

Q. Well, Mr. Reifsnider, are you familiar with the record of Mr. Montgomery in the employ of the company prior to the time when he went on as watchman at the concentrator? That would be prior to 1931. A. Yes, inasmuch as I know that he had difficulty with most of the foremen that he had worked for and had been discharged several times and reinstated prior to that time.

Q. Based upon his record as you know it, Mr. Reifsnider, would you have him in your employ in the mechanical department? A. Not willingly, no. I wouldn't want him. Montgomery is not the type that we would want in the department.

*A. C. Reifsnider—For Respondent—Cross.*

Q. Do you consider his record unsatisfactory? A. His record is unsatisfactory, and he is not an asset. He is more of a—well, demoralizing spirit in a gang rather than an asset to the gang.

Q. Would your opinion on that question be changed in any way if you knew that Mr. Montgomery had received a wallet upon which was inscribed that it was a gift from the company because of 10 years' consecutive service without a lost-time accident? A. No, it wouldn't. Those wallets were given out to all the employees who had a 10-year record without a lost-time accident; not based on ability or attitude towards their work.

Q. Was the type of work that Mr. Montgomery was engaged in while employed by the company such that there was any great hazard? A. No, no. To my knowledge, the work that he was doing—I can't recall that at any time there was a lost-time accident.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Cross examine.

*Cross examination:*

Q. (By Mr. Persinger) Mr. Reifsnider, just what were Mr. Montgomery's duties at the time he was a watchman?

A. The only duties were to spend his time on the property. You are speaking of the concentrator set-up? You see, he was a watchman in the concentrator and later a change-room watchman. At the concentrator it was simply spending his time on the property to see that it was taken care of.

Q. And what was the objection to him at that particular time? A. Leaving the property instead of staying there and taking care of it.

Q. And who was his immediate superior at that time? A. The chief watchman.

Q. Did you have a discussion with the chief watchman about Mr. Montgomery? A. Yes.



*A. C. Reifanider—For Respondent—Cross.*

Q. Did the chief watchman give him permission to leave at any time? A. Not that I know of.

Q. Did you ask the chief watchman if he had given Mr. Montgomery permission to leave at any time? A. Yes.

Q. Did Mr. Montgomery tell you that he had been given that permission? A. No.

Q. At the time he was transferred to boilermaker's helper, what was his job at that time? A. He was assigned almost all the time on repairing the mine cars.

Q. Was that repairing all done in the boiler shop? A. Yes.

Q. Who was his immediate superior then? A. Boiler shop foreman.

Q. Do you know what his name was? A. Yes, Holt.

Q. And did Mr. Holt complain to you about Mr. Montgomery? A. Yes.

Q. What was his complaint? A. That he was not attending to his work and he had to be spoken to about his attitude.

Q. Now, I believe you stated that Mr. Montgomery was transferred from his department as a watchman to boilermaker's helper in view of his long service with the company, is that correct? A. That is right.

Q. Is that a customary policy of the company? A. Yes, sir.

Q. Now, according to this record, he was discharged while he was boilermaker's helper, and reinstated on July 20, 1934. After that date did you have any complaints about him that you remember? A. Well, his work wasn't improved any, his attitude was largely the same.

Q. About how long do you estimate you would have continued to keep him in that position if nothing had intervened? If work would have continued just as it was indefinitely? A. No, we would not.

Q. Can you estimate any time? A. Well, it wouldn't be more than a matter of months.

*A. C. Reifsnider—For Respondent—Redirect.*

Q. But, as a matter of fact, you did keep him in that position for nearly a year until he walked out, is that correct? A. Yes.

Mr. Persinger: I have nothing further.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: No further questions.

*Examination by the Trial Examiner:*

Q. (By Trial Examiner Kennedy) Did you say that Montgomery's services were unsatisfactory from July 26, 1934, until June 13, 1935? A. Yes, they were.

Q. Why did you keep him on? A. For the same reason that he had been reinstated, on account of his long service.

Q. You keep people on who have long service, regardless of whether their services are satisfactory or not? A. It has been done for a period of time, yes.

Q. When did you first learn that Montgomery belonged to this union? A. I don't think I can state any time that I did know that he belonged to the union.

Q. You knew, though, didn't you? A. I knew it at the time he was outside of the shop talking to the members outside.

Q. When was that? A. That was in July of '34.

Q. July, '34? A. Yes.

Q. A year before the strike? A. Yes.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: May I ask one more question?

*Redirect examination:*

Q. (By Mr. Kitchel) What was the reason that Mr. Montgomery was discharged at that time? A. He was at that time outside of the shop leaving his work and attempting to organize the Mexican laborers.

Q. Was that during working hours? A. Yes.

*J. W. Fisher—For Respondent—Direct.*

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witnessed excused.)

Mr. Kitchel: This witness has testified and been sworn, Mr. Examiner.

Trial Examiner Kennedy: What is your name again?

Mr. Fisher: J. W. Fisher.

J. W. FISHER, a witness recalled by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and further testified as follows:

*Direct examination:*

Q. (By Mr. Kitchel) Mr. Fisher, in June, 1935, were you in charge of the operations at the three operating shafts? A. Yes, sir.

Q. What were those three shafts? A. The Cole, the Junction and the Campbell.

Q. In that capacity, were you familiar with the extent of the operations from day to day? A. Yes, sir.

Q. Do you recall, Mr. Fisher, the fact that several men walked out on June 10, 1935? A. Yes, sir.

Q. What was the immediate effect of that walk-out on the operations of the company? A. Well, for several days there was a slow-up, I would say for five to six days. After that we replaced them just as soon as possible, got men in their places and segregated them with the older employees; the newer men were put in the places of these men that walked out, and operations continued. I would say from the 18th on they were normal.



*J. W. Fisher—For Respondent—Cross.*

Q. Were the operations normal, Mr. Fisher, on July 3, 1935? A. July 3rd?

Q. Yes. A. Yes, sir; I would say the last week in June they were normal.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: You may cross examine.

*Cross examination:*

Q. (By Mr. Persinger) Do you know how many pounds of copper were actually taken from the mine during the month of June? A. You will have to get that from Mr. Buell. I don't talk in pounds. You can talk tons to me.

Q. Well, I am afraid I can't talk tons in this particular instance.

Do you know the tonnage production for June for the entire three shafts? A. For the entire month of June?

Q. Yes. A. Yes.

Q. What was it? A. 19,000.

Q. 19,000? A. No, it was 30,936. Do you want July?

Q. 30,936 tons of ore? A. That's right.

Q. Can you tell me what the production was in May?

A. In May? Around 37—38—

Mr. Kitchel: Mr. Persinger, may I interrupt a moment? I think that we can expedite this.

Have you obtained the figures on this question.

The Witness: I have. I base my testimony on the figures I received from Mr. Buell.

Mr. Kitchel: Have you them with you, Mr. Fisher?

The Witness: Yes.

Mr. Kitchel: I think if he can refer to that it will aid his testimony.

The Witness: I can give it to you very close.

Q. (By Mr. Persinger) Can you give those to me for May, June, July and August, if you have those? A. Yes.

*J. W. Fisher—For Respondent—Redirect.*

I can give them to you, and I might say a few words about our working days there.

In May we produced 40,341 tons, with 23 working days—that is, 23 under the ground;

In June, 30,966, with 3 days short;

We worked 20 days in June, showing the slow-up. From the 10th to the 15th—I may say, we over-produced the last week of June, due to various conditions underground.

Now, you wanted July, Mr. Persinger?

Q. If you have that; yes. A. 35,450.

Q. Do you have August? A. August, 40,329, with another 23 days' work.

Q. 23 days in August? A. Yes, sir.

Q. How many days in July? A. In July, 22.

Q. Do you know how long it was after June 10th before there were as many employees on the company payroll as there was on June 7th? A. I think there were a few more on June 10th. Did you say June 10th?

Q. June 10th, of course, was the strike. A. Yes.

Q. A certain number walked out. How long was it before those were replaced, do you know? A. They were replaced by the 22nd to the 28th of June.

Q. They were replaced late in June? A. Yes, sir. There was more men on the underground the latter part of June than there was on the 7th of June or the 6th of June. There was more men working in the latter part of June.

Mr. Persinger: I have no further questions.

Trial Examiner Kennedy: Anything further?

*Redirect examination:*

Q. (By Mr. Kitchel) Mr. Fisher, I will ask you whether or not a variation of four or five thousand tons between two months is an abnormal variation, in any sense of the word?

A. No. I have seen the months vary six to eight thousand tons in a month. There are many conditions to cause that.

*J. W. Fisher—For Respondent—Recross.*

If you are familiar with underground work, you will be able to see that a lot of stopes may come in the gob, that is, filled. They are empty; they are cleaned out. There may be a great many of those come in certain months. Sometimes you have a run of two or three months, and then an unusual amount of fill put in, timbering and catching up, before those stopes are ready to produce to capacity again. So I have seen months that we vary from six to eight thousand tons.

Q. Six to eight thousand tons? A. Yes.

Mr. Kitchel: That is all, I believe.

Trial Examiner Kennedy: Anything further?

*Recross examination:*

Q. (By Mr. Persinger) Was your normal development work interrupted in June? A. The normal development work?

Q. Yes. A. Our development work is controlled absolutely by the amount of fill that we need, the amount of gob. Do you understand what I mean?

Q. Yes. A. We don't hoist any waste. We break this waste and replace the ore that is taken out, and so on.

Q. But you haven't yet answered my question.

Trial Examiner Kennedy: Read the question.

(The question referred to was read by the Reporter as set forth above.)

The Witness: No.

Q. (By Mr. Persinger) It was about as usual? A. I think so.

Q. And in July it was the same? A. It varies very much, you knew, like I said; it was governed by the amount of fill that we needed. So I wouldn't know exactly what you would call "normal development." It goes up and down as the ore is mined.



*J. W. Fisher—For Respondent—Recross.*

Q. Was there any necessity for taking men off development work which had been planned, to put them on other jobs, and thereby interrupt the development work? A. No, no.

Q. Do you have a planned production schedule that indicates that in a certain month so much ore should be produced by the Copper Queen Mines? A. Usually that comes out a little before the first of the month.

Q. Do you frequently fall below that production schedule? A. Sometimes we do, and very often that is changed. It's changeable during the month—that is, according to the grade that you take out.

Q. Do you know if it has frequently happened that during any given month you have fallen so far behind your production schedule that another mine of the company—say the United Verde—would be given a portion of the production which you were supposed to produce, in order for the company to get out its quota? A. No.

Q. Is that customary? A. No, I haven't any recollection of that.

Q. You would not know about that? A. No.

Q. Do you know what your production schedule was for June? A. No, I couldn't tell you. Like I say, that changes. It varies in the month on account of the grade that you mine.

Q. You do not know, then? A. If it is a higher grade, you don't need so many tons. Very often we go to a lower grade and increase the tonnage.

Q. Do you know if in June you were below your production schedule? A. Not entirely; very little below the estimate.

Mr. Persinger: I have nothing further.

Mr. Kitchel: Nothing further, Mr. Examiner.

*Colloquy of Counsel.*  
*J. W. Fisher—For Respondent—Recross.*

*Examination by the Trial Examiner:*

Q. (By Trial Examiner Kennedy) Mr. Fisher, how long have you been with the Phelps Dodge Corporation? A. Since 1930, I think.

Q. 1930? A. Yes.

Q. During that time, has the company, to your knowledge, had any contracts with any labor organizations? A. No, I have no knowledge of that.

Q. Do you know anything about the activities of labor organizations in other properties of the corporation? A. At the other properties?

Q. Yes. A. No, sir.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Kitchel: Respondent rests, Mr. Trial Examiner.

Trial Examiner Kennedy: Have you anything in rebuttal?

Trial Examiner Kennedy: Anything else?

Mr. Kitchel: Respondent rests, Mr. Trial Examiner.

Trial Examiner Kennedy: Anything in rebuttal?

Mr. Persinger: I wish to call Mr. Henrie.

Trial Examiner Kennedy: Is Mr. Henrie here?

Mr. Persinger: I imagine Mr. Henrie will not be available tonight, but I would like to have him in the morning.

Trial Examiner Kennedy: If he is available tonight, let's get him tonight.

Mr. Kitchel: I think we can find out.

**H. C. Henrie—For National Labor Relations Board—  
Recalled—Rebuttal—Direct.**

**Trial Examiner Kennedy:** Very well. We will take a 10-minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

**Trial Examiner Kennedy:** The hearing will be in session.

**Mr. Kitchel:** Mr. Examiner, this witness has testified and has been sworn.

**Trial Examiner Kennedy:** Very well.

H. C. HENRIE, a witness recalled in rebuttal by and on behalf of the National Labor Relations Board, having been previously duly sworn, was further examined and testified as follows:

*Direct examination:*

**Q.** (By Mr. Persinger) Mr. Henrie, do you remember what your production schedule was for June, 1935? **A.** Not offhand, no. Let me see if I have it here. (Examining documents.) We were running between thirty and forty thousand tons a month all during that period.

**Q.** Well, that was not quite what I meant. Do you remember what was supposed to be your output in pounds? **A.** Not offhand, no. I couldn't tell you what we produced in pounds in June. If I had known that, I could have brought the figures.

**Q.** Do you remember about when the Cole shaft opened? **A.** Some time in the Spring of 1934; I would say March or April.

**Q.** Do you remember that men were transferred more or less constantly to the Cole shaft for a period of about a year?



**H. C. Henrie—For National Labor Relations Board—  
Recalled—Rebuttal—Direct.**

**Mr. Kitchel:** Just a moment, Mr. Henrie.

**Mr. Trial Examiner,** this witness was a witness for the Board at which time these matters were gone into, and I do not think at this time that this matter is proper rebuttal.

**Mr. Persinger:** If the Examiner please, this line of testimony was not gone into with this witness. It was with a number of, what counsel designates as, Board witnesses who were officials of the company, called by the Board. Although it is probably true that it is not proper rebuttal, it is nonetheless evidence material to the case. It has been the practice of the Board in the past not to make a very fine distinction between witnesses for the Board and witnesses for the respondent. In other words, the Board's attitude is that a witness on the stand is truthful, to be believed, no matter who calls him. If he is untruthful, he will not be believed, no matter who calls him, and that evidence which is material to the issues should properly be presented.

**Trial Examiner Kennedy:** Read the question, Mr. Reporter.

(The question referred to was read by the Reporter, as set forth above.)

**Trial Examiner Kennedy:** Do you have reference to a particular time, Mr. Persinger?

**Mr. Persinger:** I have reference to a period of approximately 12 months.

**Trial Examiner Kennedy:** Beginning or ending when?

**Mr. Persinger:** Beginning about June, 1934, and ending at the time of the discharge of eight men on June 6, 1935.

**Trial Examiner Kennedy:** With that qualification, I will permit the question to be answered.

**H. C. Henrie—For National Labor Relations Board—  
Recalled—Rebuttal—Direct.**

Do you understand the question, Mr. Henrie?

The Witness: I would like to hear the question.

Trial Examiner Kennedy: Read the question, Mr. Reporter, with those qualifications.

(The record referred to was read by the Reporter, as set forth above.)

The Witness: I would say they were transferred starting with March or April.

Q. (By Mr. Persinger) But those transfers continued at different intervals over a period up to that time? A. Yes.

Q. Can you tell me who determined the policy to be followed in making those transfers? A. Transfers are made for different reasons.

Q. I mean, of course, referring to the transfers to the Cole? A. Well, as I stated the other day, the shaft started; the first group which they would need would be shaft repairmen. There you would pick men qualified for that particular type of work. No doubt on those men the general foreman or the mine superintendent would select those two or three first men. Following that would come some drift repairs and clean-ups. There again you would have to have experienced repairmen. There again the general foreman would probably pick those men. Now, as you got to production, then the foreman at the Cole would say, "I want five miners, four muckers, two motormen," or whatever his requirements might be. In that case, I presume the general foreman would talk to his other foremen and say, "We want five men, or four men, or three men of a certain type for the Cole."

Q. Did you ever issue any instructions, or were you aware that Captain Hodgson issued any instructions that only union men were to be sent to the Cole shaft? A. I don't believe any such instructions were ever issued.

*H. C. Henric—For National Labor Relations Board—  
Recalled—Rebuttal—Direct.*

Q. Were you acquainted with the reason for the discharge of the, I believe, eight men who were discharged on June 6, 1935, all of whom worked in the Cole shaft? A. Yes, I knew about it.

Q. Was there any discussion among the management? A. There was.

Q. Concerning those men? A. There was.

Q. Can you tell us what that discussion was, approximately, in substance? A. Several employees had called on the management—Captain Hodgson, I am referring to now—complaining that hot water had been shut off. One man, I believe, stated that he had been locked out of the change room, not allowed to change after coming off shift.

There was also some complaint regarding shoving and pushing on the cages.

After several of these complaints had been received, one afternoon—and I don't know the date, but it was either the day preceding their discharge, or the day of their discharge—Captain Hodgson, myself, Mr. Barkdoll and Mr. Fisher met in the mine office.

For certain reasons I asked to be allowed to do the talking. I asked Jack what in the devil was the matter at the Cole shaft. He gave some information. We mentioned what we had heard and, as I recall it, Fisher said that he would check in with the foreman and the bosses at the Cole shaft.

Some time later he returned and confirmed this story of men leaving their working places, efficiency dropping, and, well, among other things, barking like dogs when the cage passed the stations, shoving in the cages, turning off the water in the change room, and a number of other things; I can't recall them all.

Well, the discussion ran something like this. I might add that we had been bearing down on the foremen and bosses in regard to discharge. That is to say, not discharge



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until they were sure they had a case. In this case it looked as if they may have been a little lax, and the thought was that in view of the situation which had existed prior, slowing down, sabotage, many other things which necessitated many transfers to the Cole, that it was time to see who was going to run the mine, whether the employees were over there or the management, and Jack was told to clean up the situation.

Trial Examiner Kennedy: Who is "Jack"?

The Witness: Mr. Fisher.

Various names were mentioned, and, with the information he brought in, some eight men—I believe it was eight—were selected, and, I believe, Mr. Ratteree discharged the men. Beyond a certain conference point, I don't know what—

Q. (By Mr. Persinger) Well, at the time of the conference, were you aware, or were you informed that those eight men who were later discharged were members of the Union? A. I would say that I knew that some of them were members of the Union. Some of those men, I couldn't positively say—that is, I think all of us knew that certain men probably belonged to the Union; their names would be in the paper; you would hear discussion; but as for telling every one that belonged to the Union, I couldn't do it, and I think that would hold true on that eight men.

Q. Were you aware at the time of those instructions, that on May 30, May 31, June 1st, and, I believe, June 5, about eight men who were not members of the Union were transferred to the Cole shaft? That was just prior to the discharge. A. No, I am not familiar with that transfer.

Q. Were you aware at about the first of June, 1935, that for some time there had been some ill-feeling between members of the Union and members of the Employees' Association? A. At what date?

*H. C. Henrie—For National Labor Relations Board—  
Recalled—Rebuttal—Direct.*

Q. About the first of June, 1935—that sometime prior to that there had been this ill-feeling, which had continued?

A. Oh, yes.

Q. If you had known that substantially all the men in the Cole shaft on May 29th were Union men, would you have advised a transfer to that shaft of eight non-union men?

A. No.

Q. Referring to the time of the strike, how soon after that did the company formulate a definite policy as to reinstatement or non-reinstatement of the strikers? A. Mr. Persinger, we haven't formed a definite policy to this day.

Q. During the period of the strike, was it a part of your duties to report on the progress of the strike to Mr. Beckett, and to hire officials? A. Oh, I wrote frequent memoranda to them, yes. They asked to be advised as to how things were going.

Q. During the progress of the strike and, say, from a period of about June 1st until the end of the strike, were you receiving information as to what went on at closed Union meetings? A. From when?

Q. About the 1st of June, '35, until August 24, when the strike was called off?

Mr. Kitchel: Just a minute. We object to that question. Now, we are going a way into collateral and irrelevant issues here, I believe.

Mr. Persinger: If the Examiner please, I do not think the question of receiving information of what went on at closed Union meetings just prior to and at the time when six union men were discharged, and during the course of this strike, is collateral. I think it is rather important.

Mr. Kitchel: Mr. Examiner, I cannot see that it has any bearing on the charge that there has been discrimination and refusal to reinstate these men.

*H. C. Henrie—For National Labor Relations Board—  
Recalled—Rebuttal—Direct.*

Trial Examiner Kennedy: I will overrule your objection. You may answer.

Mr. Kitchel: The witness will not answer the question.

Trial Examiner Kennedy: You are instructed to answer the question, Mr. Witness. Read the question. (The question referred to was read by the Reporter as set forth above.)

The Witness: I would have to state, on advice of counsel I refuse to answer.

Mr. Persinger: May I speak to counsel a moment?

Trial Examiner Kennedy: Yes.

(Informal discussion off the record.)

Mr. Persinger: I will at this time continue the cross examination, and, for the moment, I would like to waive the answer to the question.

Trial Examiner Kennedy: Very well.

Mr. Persinger: I will offer as Board's Exhibit next in order, a letter supplied by respondent in answer to a subpoena, dated June 10, 1935, and written to Mr. Louis S. Cates, President of Phelps Dodge Corporation, by Mr. Beckett, Vice-President and General Manager at that time.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: We object to the introduction of that letter, any portion of it, Mr. Trial Examiner, on the ground it is irrelevant.

Trial Examiner Kennedy: May I see the letter?

(Passing document to the Examiner.)

Trial Examiner Kennedy: Is there any question as to the authenticity of this copy?

Mr. Kitchel: No, Mr. Trial Examiner.

Mr. Evans: It was furnished by the respondent.

Trial Examiner Kennedy: It will be received in evidence.



*H. C. Henrie—For National Labor Relations Board—  
Recalled—Rebuttal—Direct.*

Q. (By Mr. Persinger) The first paragraph of this letter from Mr. Beckett, who at that time was your superior, was he not? A. No.

Q. Not at that time? A. No.

Q. As Vice-President and General Manager he was higher than you, at least? A. Oh, yes, yes.

Q. The first paragraph reads: "Last week at Bisbee, the Mine Department sent over to the Cole shaft four or five non-union men to fill vacancies in that mine. As you know, the personnel of the Cole mine is largely union, as we have tried to segregate the union men there." You were not aware of that policy during the 12 months preceding the strike? A. No. The answer to that question is simply this: It was largely union, but men were segregated to the Cole mine simply for a reason that merely as a working basis, the foreman passing out men apparently that they didn't want, would send these men when they were asked for.

Q. But this—"The personnel of the Cole mine is largely union, as we have tried to segregate the union men there"—which obviously indicates a definite policy, does it not? A. I don't think there is any doubt that it was largely union.

Q. But was there a policy to attempt to segregate all the union men into the Cole shaft? A. Not that I ever heard of.

Q. The next to the last paragraph reads:

"I am sorry, of course, that this thing has come about but honestly, I feel it had to come some time as our union friends are so deplorably weak at the present time it might just as well come now as later. For some time their feeling has been that they might just as well try and pull a strike as continue to lose out in the way they have been doing and finally get sunk without making a little play first."

Now, about the time of the beginning of the strike, was there any policy adopted by you or Mr. Hodgson, or, to your

*H. C. Henrie—For National Labor Relations Board—  
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knowledge, Mr. Beckett, concerning a possible arbitration of the strike?

A. At the start of the strike?

Q. Yes. A. Not that I know of.

Q. The last paragraph of the letter reads—the last sentence of the next to the last paragraph reads:

“I presume the next move will be that the union men will holler for help from somebody and want arbitration which we shall decline.”

That was written June 10th. You were not aware of such a policy at that time?

A. Oh, I would say there was a natural inference there because when a man was discharged or barred in proceedings in progress, there was always threats of strike, bringing in mediators, trying to arbitrate. It was quite usual during that period.

Mr. Persinger: I will offer as Board's Exhibit next in order, which will be Board's Exhibit 58, a telegram covering substantially the same substance as is existent in Board's Exhibit 57.

Mr. Kitchel: We object, Mr. Trial Examiner, on the same grounds. It is irrelevant.

Trial Examiner Kennedy: May I see the telegram?

(The document referred to was passed to the Trial Examiner.)

Trial Examiner Kennedy: There is no question as to the authenticity of the document?

Mr. Kitchel: No question.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 58.)

Mr. Persinger: I will offer as Board's Exhibit No. 59 the letter dated August 6, 1935, from Mr. Beckett

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Recalled—Rebuttal—Direct.***

to Mr. Cates, the last line of the second paragraph of which reads—I had better read the entire paragraph.

It reads as follows: "The State Federation of Labor people had a meeting in Tucson the other day as per the enclosed clipping. I understand that a Federation Committee of local people, some of them Douglas boys, has been appointed to see the management and find out if they can act as conciliators. They will, of course, be told that there is no way they can help."

Mr. Kitchel: We object to the introduction of that. It still does not seem to have any bearing on this case. Would counsel mind stating his position?

Mr. Persinger: It bears on the general policy of the company, which was not to reinstate these strikers and not to even listen to anyone who would suggest a possible settlement of the strike.

Trial Examiner Kennedy: Mr. Louis S. Cates at San Francisco is who?

Mr. Kitchel: President of the corporation.

Trial Examiner Kennedy: President of the corporation?

It will be received in evidence as Board's Exhibit next in number.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 59.)

Mr. Persinger: I will offer as Board's Exhibit No. 60 two letters jointly: One dated August 13, 1935, from Mr. Beckett to Mr. Cates, enclosing the second letter which is dated August 10, 1935, from Mr. Henrie to Mr. Beckett.

Trial Examiner Kennedy: Are you familiar with the letter?

Mr. Kitchel: Yes. We make the same objection, Mr. Trial Examiner.



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Recalled—Rebuttal—Direct.*

Trial Examiner Kennedy: May I see it, please?  
(The documents referred to were passed to the  
Trial Examiner.)

Trial Examiner Kennedy: We will take a short  
recess.

(At this point a short recess was taken, after  
which proceedings were resumed, as follows):

Trial Examiner Kennedy: The hearing will be in  
session.

As to the offered exhibit, who is Mr. Barkdoll?

Mr. Kitchel: Mr. Barkdoll is General Superin-  
tendent of the Copper Queen Branch, Mines Division,  
until December 1, 1937.

Trial Examiner Kennedy: The exhibit will be  
received in evidence.

(Thereupon the document above referred to was  
received in evidence and marked as Board's Exhibit  
No. 60.)

Trial Examiner Kennedy: Do you wish to offer  
this also? I have read it.

Mr. Persinger: I will in a moment.

Q. Mr. Henrie, on August 10, 1935, which was prior to  
the termination of the strike, in the year 1935, you wrote a  
letter to Mr. Beckett headed "A Memorandum Covering a  
Meeting With Committee Representing Arizona State  
Federation of Labor," and on page 5, the last paragraph,  
you state that "Mr. Barkdoll advised the committee it would  
be impossible to reinstate these men"—referring to the  
strikers—"who had quit the service of the company." Can  
you tell me when that policy was decided upon? A. Oh,  
you couldn't have put those men back to work at that time.  
The feeling was too great.

Q. I mean, when was it decided? A. Probably that day  
at that meeting. That was a meeting with a committee

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representing the State Federation of Labor for the purpose of discussing the strike and its solution.

Q. And on the following page you reiterate, "We again advised the committee that the men who had quit could not be reinstated." Do you know if there has been any change in this policy since that letter was written? A. No, there hasn't.

Mr. Persinger: I offer as Board's Exhibit 61, a letter dated August 27, 1935, from Mr. Beckett to Mr. Cates, enclosing a letter dated August 24, 1935, from Mr. Henrie to Mr. Beckett.

Trial Examiner Kennedy: Are you familiar with the letter, counsel?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit next in order.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 61.)

Mr. Persinger: I offer in evidence as Board's Exhibit 62, a letter of July 14, 1937, from the General Manager—I believe Mr. Lavender, on that date—to Mr. Cates, and a second letter dated July 17, 1937, from the General Manager to Mr. Cates.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit next in order.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 62.)

Q. (By Mr. Persinger) Mr. Henrie, when did it first come to the attention of the company, so far as you know, that a campaign of distributing literature was started by

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the C. I. O. in the Summer of 1937,—that would be about July? A. I couldn't tell you what date that it occurred,—what would be the date that they were passing them out at the gates. I don't know the exact date.

Q. Was there a meeting of the management at that time to discuss what policy to adopt in regard to that? A. No.

Q. Was there ever any such meeting, to your knowledge?

A. Not to my knowledge.

Q. Was there any definite policy adopted on the question of whether to do anything or to do nothing about the organizing activities of the C. I. O., in July of 1937? A. No.

Q. Mr. Beckett—or, rather, Mr. Lavender, in writing to Mr. Cates, said, "We have instructed our watchmen to ignore these groups"—referring to the C. I. O. members distributing literature—"as long as they stay outside the company fence and property, and to caution the employees to likewise ignore them."

Now, can you tell me what method was used to caution the employees to ignore the C. I. O. distributors of literature? A. I don't think that is the way that is meant at all. May I have the letter just a second?

Q. Let me read the next paragraph and then you may. In the letter of July 17th, also from Mr. Lavender to Mr. Cates,—

"We will continue our policy of ignoring their presence as long as they stay outside the property fence and will attempt to have the men and authorities do likewise."

A. Isn't it mentioned in those letters what we were afraid of was a mixup between the two groups, and that the men distributing literature stay away from the gate, and that the watchman at the gate tell the men to do likewise coming off shift?

Q. Well, now, what I wanted to know: The watchman at the gate was to tell the men coming off shift to ignore the



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C. I. O. men who were distributing literature, was he not?

A. Not in that sense, not to pick a fight, in other words.

Q. You think that is what it meant? A. Oh, there ain't no question about it. The whole letter is very evident.

Mr. Persinger: I will offer as Board's Exhibit No. 63, a letter dated June 25, 1935, from Mr. Beckett to Mr. Cates, and I am offering it solely for the pages 3 and 4, which concern, as Mr. Beckett states, the effect of the strike on the operations, and then he goes into the decrease in production for that period.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit 63.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 63.)

Mr. Persinger: I will offer as Board's Exhibit No. 64, a letter dated June 11, 1935, which is merely a covering letter enclosing a letter dated June 10, 1935, from Mr. Henrie to Mr. Beckett.

Mr. Kitchel: May we have just a moment, Mr. Examiner?

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: We object to the portion of the letter referred to by counsel, I believe on page 2, upon the ground that it is immaterial to the issues in this case.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit next in number.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 64.)

Mr. Persinger: I will offer as Board's Exhibit No. 65 copies of two telegrams typed on the same sheet of paper, the first from Mr. Beckett to Mr. Cates, dated August 25, 1935; the one typed in below that from

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Mr. J. H. Davis to Mr. Beckett, dated August 25, 1935.

Q. Can the witness tell me who Mr. J. H. Davis is? A. Office Manager of the corporation.

Q. Was that the position that he held at that time? A. Yes.

Mr. Persinger: Thank you.

Trial Examiner Kennedy: Any objection.

Mr. Kitchel: I have not found it yet, Mr. Examiner.

Mr. Evans: What is the date?

Trial Examiner Kennedy: August 25th.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit next in number.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 65.)

Mr. Persinger: I offer as Board's Exhibit No. 66 a letter dated June 5, 1937, from Mr. Henrie to Mr. Lavender. Mr. Lavender at that time was General Manager.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 66.)

Mr. Persinger: I offer as Board's Exhibit No. 67 a letter dated June 15, 1937, from General Manager, Mr. Lavender, to Mr. Cates, enclosing a letter dated June 11, 1937, from Mr. Henrie to Mr. Lavender.

Mr. Kitchel: No objection.

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Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit next in number.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 67.)

Q. (By Mr. Persinger) Referring to Board's Exhibit No. 64, Mr. Henrie, on June 10th you wrote Mr. Beckett, on page 2, "Mr. Dave Pearce, Editor of the Cochise County Labor News, called a special meeting of the Bisbee Miners' Union the evening of June 7th. Approximately 10 or 12 men attended this meeting. Mr. Pearce wired officials of the Mine, Mill and Smelter Workers' organization for permission to declare a strike."

How did that information come to you?

Mr. Kitchel: Just a minute. We object to that upon the ground it is improper rebuttal. It is immaterial. It is a part of counsel's case in chief.

Trial Examiner Kennedy: Well, we are not confined to any strict rules of evidence on order of presentation of testimony, Mr. Kitchel. Your objection is overruled.

Mr. Kitchel: I will ask the witness on advice of counsel not to answer the question.

Trial Examiner Kennedy: You are instructed to answer the question.

The Witness: On advice of counsel, I refuse to answer.

Trial Examiner Kennedy: You understand the penalty that accrues to you when you do not answer questions that have been ruled proper questions? Do you understand that?

Mr. Kitchel: I believe we have advised Mr. Henrie fully on that.

Trial Examiner Kennedy: I see.



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Trial Examiner Kennedy: Do you still refuse to answer?

The Witness: On advice of counsel, yes.

Mr. Persinger: Referring to Board's Exhibit 64, the first paragraph states:

"Bisbee Miners Union voted last night to call off strike. Vote carried 40 to 10."

Can you tell me, Mr. Henrie, how you received that information?

Mr. Kitchell: Just a minute——

Mr. Persinger: Perhaps I should ask first——

Q. (By Mr. Persinger) Did you receive that information? A. It was public knowledge always.

Q. You mean the vote? A. Yes.

Q. On June 5, 1937, Mr. Henrie, you wrote Mr. Lavender, and you stated, among other things,——

"In order to ascertain, if possible, just what is embodied in the various charges, I shall probably have to talk with Nylander and some other people in Los Angeles, and shall probably leave here Tuesday afternoon."

Will you tell why, in order to determine what was in the charge, you should have to talk to anyone other than Dr. Nylander? A. I wouldn't have to.

Q. Can you tell me why you wrote to Mr. Lavender that you would have to? A. We had no idea just what those charges were, and wanted to find out before answering the letter.

Q. But to whom could you talk in Los Angeles other than Dr. Nylander, who could give you that information? A. I know of no one offhand.

Q. You wrote to Mr. Lavender on June 11, 1937, and you stated:

"I think our visit convinced Nylander that the Union does not have much of a case. From other sources, I ascertained that Nylander is dissatisfied with the outcome of the

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1935 matter, and would like, if possible, to even up matters with the company."

What "other sources" did you receive that from? A. I had lunch with three or four business men around Los Angeles.

Q. Can you tell me their names? A. Yes.

Mr. Kitchell: I object to that. I can't see that that is relevant at all, Mr. Trial Examiner,—the names of people in Los Angeles.

Mr. Persinger: I think it is relevant, Mr. Examiner, that an official of the company in Bisbee, Arizona, would write first that he had to see other people in Los Angeles in order to receive information concerning charges filed with the Board, and then that he later did talk with other persons and received certain information relative to the attitude of the Board's Regional Director.

The Witness: I received my information from the Regional Director. You were present.

Q. (By Mr. Persinger) "From other sources I ascertained that Nylander is dissatisfied——" A. That part of it, yes; several business men from Los Angeles.

Trial Examiner Kennedy: Is there a question pending?

Mr. Persinger: Counsel has objected to the making known the names of those business men.

Trial Examiner Kennedy: Well, I don't understand that you directly asked him for those names. You asked him whether he could give the names, and he said "Yes." Now, if you want to pursue that, continue.

Mr. Persinger: I thought I had asked the question.

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Q. (By Mr. Persinger) What are the names of those business men?

Mr. Kitchel: I make the same objection at this time, Mr. Examiner.

Trial Examiner Kennedy: The objection is overruled. He may answer.

A. C. D.—or, C. T. Tibbett, President of the Los Angeles Steel Casting Company, an old friend of mine, knows Nylander very well.

Q. And the other two? A. Now, wait a minute. I think Mr. Ryan—I wouldn't be certain. He joined the lunch table sometime along there. Mr. Ryan, of Pittsburgh.

Q. And was there another? A. I believe Mr. Kitchel was there.

Q. And any other business men from Los Angeles? A. Not that I recall right now.

Mr. Persinger: I have nothing further, Mr. Examiner.

Trial Examiner Kennedy: You may examine.

Mr. Kitchel: Nothing further.

Mr. Persinger: There are two questions that have been asked this witness, and he has refused to answer. Will you indicate what position the Board desires to take?

Mr. Persinger: I cannot at this time, Mr. Examiner. I would prefer, on that particular point, to advise the Board itself and receive instructions from the Board.

Trial Examiner Kennedy: Will it be necessary to keep this case open until that matter has been determined?

Mr. Persinger: I think it might well be necessary to do so.

Trial Examiner Kennedy: Very well.



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*Examination by the Trial Examiner:*

Q. (By Trial Examiner Kennedy) Mr. Henrie, how long have you been with the respondent corporation? A. Since 1909.

Q. To your knowledge, has the corporation entered into any contracts with any labor organization during that time? A. Yes.

Q. Will you describe them? A. They have a collective book—perhaps I should say agreement. They have a collective bargaining agreement with the Employees' Association in Bisbee. They have an agreement or a contract with the A. F. of L. in Fort Wayne. They have a contract with the A. F. of L. again. I think it is the Bayway, New Jersey. It is in the manufacturing place.

Q. What was the last one? A. I think it is Bayway, New Jersey, Phelps Dodge Copper Products Company.

Q. Is that the same corporation as this? A. Well, a subsidiary.

Q. A subsidiary. Do you know of any other contracts they have with labor organizations? A. I believe they have a bargaining agreement with the Employees' Association at New Cornelia Branch, Ajo, Arizona.

Q. Ajo? A. Ajo, Arizona.

Q. Do you know when the contract or agreement was entered into with the Bisbee Association? A. August—no, let's see. It's either August or October, '35. I think I have it on my notes here.

Mr. Persinger: I believe it was August. I think so.

Q. (By Trial Examiner Kennedy) Do you know what the terms of that contract or agreement are? A. Yes.

Q. Can you describe them in general? A. Yes. On presentation of a sworn certificate, in which they showed they had the overwhelming majority of the employees as members, they asked for a collective bargaining agreement.

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That agreement provides that the company will meet with them for the purpose of discussing any question—by that, I mean wages, hours; anything that came up of mutual interest—they to meet with what they termed the Executive Committee. It specifies that the company shall appoint its own members on the committee, shall meet at regular intervals. Questions that can't be settled by the Joint Committee or Council bargaining conference shall be subjected to arbitration, and it sets up in that section of it means of choosing arbitrators.

Q. It has no closed-shop feature? A. No.

Q. Do you know when the A. F. of L. contract at Fort Wayne, Indiana, was entered into? A. I do not.

Q. Do you know what particular union it was entered into with? A. It is a Federal Union, but the number, and all of that, I don't know.

Q. Do you know any more of the detail about the contract in the New Jersey plant? A. No, except there again, I think that was a Federal Union and covers the usual clauses that you find in such agreements and contracts.

Q. Do you know anything about when the contract at Ajo was entered into? A. No, I don't; but it has been in effect for several years; I know.

Q. With what union is that? A. I think they call that the Ajo Copper Miners' Association, or something like that.

Q. Is the Association affiliated with any national or international association? A. No.

Q. Is it a closed-shop agreement? A. No.

Q. Are these companies that you speak of—Fort Wayne, Indiana, and New Jersey, and the one at Ajo—the Phelps Dodge Corporation or subsidiaries or affiliates? A. Well, the New Cornelia Branch at Ajo would be a branch, just the same as the Mines Division here is at Bisbee.

Q. Part of the Phelps Dodge Corporation? A. Part of the Phelps Dodge Corporation. So would the plant at Fort

*Motion to Dismiss.*

Wayne be part of the corporation, but through the Phelps Dodge Copper Products. Maybe I am getting twisted on some of the names, but bearing the same relation to the corporation as we do here at the Mines Division.

Q. Do you know about the New Jersey situation? A. The same corporate set-up.

Trial Examiner Kennedy: The same.

That is all. Any further questions?

Mr. Kitchel: Nothing further, Mr. Examiner.

Q. (By Mr. Persinger) Do you know, Mr. Henrie, if the agreement with the Employees' Association in the Mines Division, Copper Queen Branch, has any provisions concerning strikes? A. I don't think so.

Mr. Persinger: I have nothing further.

Mr. Kitchel: Mr. Examiner, before we adjourn I wonder if we could take a five-minute recess, and we might be able to stipulate on certain facts.

Trial Examiner Kennedy: Very well. The witness is excused.

(Witness excused.)

Trial Examiner Kennedy: We will take a five-minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows):

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger: If the Examiner please, it has been stipulated between counsel that just prior to and during the progress of the strike, respondent corporation had the local under surveillance, but counsel has assured me, and I will agree to stipulate, that that surveillance was discontinued a few months after the strike was concluded, and has not been recontinued at any time since. With that stipulation, I will be



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glad to withdraw my questions which Mr. Henrie declined to answer on advice of counsel.

Trial Examiner Kennedy: Very well. Now, as I understand it, that closes the taking of testimony in this case. The record will show that the taking of testimony is formally closed.

Do counsel for either side wish to argue the matter orally before the Trial Examiner?

Mr. Kitchel: I don't believe that we do, Mr. Examiner.

Trial Examiner Kennedy: The Board's attorney?

Mr. Persinger: The Board does not wish at this time to argue the matter.

Trial Examiner Kennedy: Very well.

The parties may apply to the Board within five days from now for leave to argue the matter orally before the Board, if they so desire. That is not compulsory. The parties are afforded an opportunity to file briefs, if they so desire, with the Trial Examiner.

What is the position of the Board's attorney?

Mr. Persinger: I believe, Mr. Examiner, that the Board will not file a brief.

Trial Examiner Kennedy: Respondent counsel?

Mr. Kitchel: The respondent would like to file a brief.

Trial Examiner Kennedy: Very well. The brief will be filed by placing in the mail, addressed to the Trial Examiner at 745 Pacific Electric Building, Los Angeles, California, within five days at this date. The Board's attorney will be served a copy, and Board's attorney will be accorded an opportunity to answer the brief, if he so desires.

Mr. Kitchel: Mr. Trial Examiner, could that period be extended at all?

Trial Examiner Kennedy: No, sir; it cannot. You are not forced to file a brief. If you do not wish to,

*Motion to Dismiss.*

you do not have to. If you are going to file one, I want it in the mail within five days of this time.

The Board's attorney will file an answer within three days of receipt of respondent's brief, if he desires to do so. That is not compulsory.

With that, gentlemen, the hearing is concluded.

Mr. Kitchel: Mr. Examiner, excuse me just a moment. Would it be in order, Mr. Examiner, within that period of five days, rather than to ask for a recess at this time, if at some time, anyway, to make preparation for us to file our written motions to dismiss?

Trial Examiner Kennedy: You have already made your motion to dismiss at the conclusion of the Board's case, and those motions have been disposed of.

Mr. Kitchel: Well, we have two or three motions that we want to add to that, based upon the testimony which has been brought out on the defense.

Trial Examiner Kennedy: I will hear them all.

Mr. Kitchel: Respondent, then, renews the motion that he made at the close of the Board's case, and, in addition to that, respondent moves to dismiss the case on the ground that there has been no evidence to show that the mining operations of the Mines Division, Copper Queen branch of respondent, constitutes commerce, or that the labor relations within those operations in any way affect commerce, and that regulating of those relationships of employers and employees within the Mines Division is without the power of Congress, under the Tenth Amendment.

Trial Examiner Kennedy: Do you wish to speak on your motion?

Mr. Kitchel: No, Mr. Trial Examiner.

Trial Examiner Kennedy: Do you wish to speak against the motion, Mr. Persinger?

*Motion to Dismiss.*

Mr. Persinger: No, only to repeat what I stated once before—

Trial Examiner Kennedy: I have already heard what you said before, so if you have nothing to add to it, it is not necessary.

Mr. Persinger: I have nothing to add.

Trial Examiner Kennedy: The motions are severally denied.

Mr. Kitchel: In addition, the respondent moves to dismiss the complaint on the ground that there was no strike in effect on July 5, 1935, the effective date of the Wagner Act, that none of the complaining witnesses were employees within the definition of the Wagner Act on that date, and that any affirmative order of the Board with respect to those 45 complainants would be a denial of the liberty of contract under the Fifth Amendment, and any affirmative action in the way of back pay would be a denial of due process under the Fifth Amendment, and a denial of trial by Jury under the Seventh Amendment to the Constitution.

Trial Examiner Kennedy: Anything to say on that?

Mr. Persinger: Nothing but what has already been said.

Trial Examiner Kennedy: The motion is denied.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: That concludes this hearing, and I wish, before the report is completed, to compliment counsel on both sides for the expeditious and efficient handling. It is one of the best presentations that I have had the privilege of witnessing. I want to thank you all.

(Whereupon, at 9:15 o'clock p. m., the hearing in the above-entitled matter was concluded.)



**Board's Exhibit No. 5.**

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**  
**TWENTY-FIRST REGION**

**IN THE MATTER OF**  
**PHELPS DODGE CORPORATION, a corpo-**  
**ration**  
**and**  
**INTERNATIONAL UNION OF MINE, MILL,**  
**AND SMELTER WORKERS, LOCAL No. 30.**

**CASE No.**  
**XXI-C-266**

**Stipulation.**

For the purpose of the hearing in the above entitled case, the following facts are hereby stipulated and agreed to by and between the attorney for the National Labor Relations Board and the attorneys for respondent, Phelps Dodge Corporation:

**I.**

Phelps Dodge Corporation was incorporated under the laws of the State of New York on August 10, 1885.

The following is a list of the wholly owned active subsidiaries of Phelps Dodge Corporation:

**(1) Mining properties:**

- a. Moctezuma Copper Company with properties located in the district of Moctezuma, State of Sonora, Mexico.
- b. Compania Minera de San Carlos, S. A. with properties located in the State of Chihuahua, Mexico.

*Board's Exhibit No. 5.*

- (2) Copper refining:
  - a. Nichols Copper Company with plants located at Laurel Hill, New York, and El Paso, Texas.
- (3) Copper fabricating:
  - a. Phelps Dodge Copper Products Corporation with plants located at Bayway, New Jersey, Yonkers, New York, Fort Wayne, Indiana, and Los Angeles, California.
- (4) Utilities:
  - a. Ajo Improvement Company at Ajo, Arizona.
  - b. Warren Company at Warren, Arizona.
  - c. The Morenci Water Company at Morenci, Arizona.
  - d. Upper Verde Public Utilities Company at Jerome Arizona.
- (5) Mercantile companies:
  - a. Phelps Dodge Mercantile Company with stores at Dawson, New Mexico, Bisbee, Douglas and Ajo, Arizona.
- (6) Railroads:
  - a. Verde Tunnel & Smelter Railroad Company operated between Jerome and Clarkdale, Arizona.
- (7) Dawson Fuel Sales Company at Dawson, New Mexico.
- (8) Cochise Publishing Company at Bisbee, Arizona:

**II.**

Following is a list of the ore produced at the various mines of the Phelps Dodge Corporation during the fiscal years 1936 and 1937, and the destinations of such ore:

*Board's Exhibit No. 5.***1. Copper Queen Branch, Mines Division:**

The Copper Queen Branch, Mines Division, of Phelps Dodge Corporation, produced 795,946 dry tons of ore in the year 1936, and 967,249 dry tons of ore in the year 1937. In the year 1936, 785,061 tons of copper smelting ore were shipped to the smelter of the Copper Queen Branch, Smelter Division, of Phelps Dodge Corporation, at Douglas, Arizona, 10,453 tons of basic sulphide ore were shipped to the smelter of the American Smelting and Refining Company at El Paso, Texas; and 432 tons of silver-lead ore were shipped to the refinery of the Nichols Copper Company at El Paso, Texas. In the year 1937, 967,049 tons of copper smelting ore were shipped to the smelter of the Copper Queen Branch, Smelter Division, of Phelps Dodge Corporation, at Douglas, Arizona, and 200 tons of silver-lead ore were shipped to the refinery of the Nichols Copper Company at El Paso, Texas.

**2. New Cornelia Branch:**

In the year 1936, the New Cornelia Branch of the Phelps Dodge Corporation, produced 4,912,956 tons of milling ore, and in the year 1937, produced 6,085,511 tons of milling ore. In the year 1936, all of the concentrates produced from these milling ores were shipped from Ajo, Arizona, to the smelter of the Copper Queen Branch, Smelter Division, of Phelps Dodge Corporation at Douglas, Arizona. In the year 1937, approximately 85% of the concentrates produced from these milling ores were shipped to the smelter of the Copper Queen Branch, Smelter Division, of Phelps Dodge Corporation at Douglas, Arizona, and the balance was shipped to the smelter of the Morenci Branch, Smelter Division of Phelps Dodge Corporation at Clifton, Arizona.

**3. United Verde Branch, Mine Division:**

During the year 1936, the United Verde Branch, Mine Division, of Phelps Dodge Corporation, produced 1,302,974



*Board's Exhibit No. 5.*

tons of smelting and milling ore and in the year 1937, 1,433,330 tons of such ore were produced. All of the production for both years was shipped from Jerome, Arizona, to the smelter of the United Verde Branch, Smelter Division, of Phelps Dodge Corporation at Clarkdale, Arizona.

*4. Morenci Branch, Mines Division:*

In the year 1936, the Morenci Branch, Mines Division, of Phelps Dodge Corporation produced 1,258 tons of precipitates, and in the year 1937, 9,269 tons of precipitates. In the year 1936, the entire production was shipped to the smelter of the Copper Queen Branch, Smelter Division, of Phelps Dodge Corporation at Douglas, Arizona. In the year 1937, 794 tons were shipped to the smelter of the Morenci Branch, Smelter Division, at Clifton, Arizona, and the balance of the production for that year was shipped to the smelter of the Copper Queen Branch, Smelter Division, of Phelps Dodge Corporation at Douglas, Arizona.

*5. Stag Canon Branch:*

In the year 1936, the Stag Canon Branch of Phelps Dodge Corporation, located at Dawson, New Mexico, produced 267,118 tons of coal, and in the year 1937, 271,178 tons were produced. In both years, approximately 75% of the production was sold to railroads and the balance was sold to the New Mexico Power Company and to others for various commercial uses.

*6. Moctezuma Copper Company:*

In the year 1937, the Moctezuma Copper Company, a wholly owned subsidiary of Phelps Dodge Corporation, at its mine located in the District of Moctezuma, State of Sonora, Republic of Mexico, produced 35,737 tons of milling ore, all of which was shipped to the smelter of the Copper Queen Branch, Smelter Division, of Phelps Dodge Corporation at Douglas, Arizona.

*Board's Exhibit No. 5.***III.**

The following is a list of the tonnage of refined copper produced by Nichols Copper Company at its refineries at Laurel Hill, New York, and El Paso, Texas, during the years 1935 and 1936:

	<i>Year 1935</i>	<i>Year 1936</i>
	<i>Pounds of Copper</i>	
Laurel Hill, New York.	193,688,357	222,155,812
El Paso, Texas .....	166,082,707	188,096,706
<b>Total .....</b>	<b>359,771,064</b>	<b>410,252,518</b>

The division of the above refined copper production, as between the amount derived from Phelps Dodge Corporation copper bullion and from other sources, is as follows:

	<i>Year 1935</i>	<i>Year 1936</i>
	<i>%</i>	<i>%</i>
<b>Laurel Hill, New York:</b>		
Production from,—		
Phelps Dodge Corp. bullion	None	18.95
Other Sources .....	100.00	81.05
	<u>100%</u>	<u>100%</u>
	<i>Year 1935</i>	<i>Year 1936</i>
	<i>%</i>	<i>%</i>
<b>El Paso, Texas:</b>		
Production from,—		
Phelps Dodge Corp. bullion	73.34	79.96
Other Sources .....	26.66	20.04
	<u>100%</u>	<u>100%</u>
<b>Combined:</b>		
Production from,—		
Phelps Dodge Corp. bullion	33.86	46.92
Other Sources .....	66.14	53.08
	<u>100%</u>	<u>100%</u>

*Board's Exhibit No. 5.*

The production at both of the above mentioned refineries was derived from materials the major portion of which came from without the States of New York and Texas.

The quantity of sulphuric acid used at the two refineries of the Nichols Copper Company for the years 1935 and 1936, in the refining of copper and in the manufacturing of blue vitriol (copper sulphate), and the source of the same, were as follows:

	<i>Year 1935</i>	<i>Year 1936</i>
Laurel Hill Refinery—Pounds	15,166,651	19,477,369

*Source:*  
General Chemical Co.,  
Hudson River Works,  
New Jersey.

El Paso Refinery—Pounds.....	1,225,197	2,509,892
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*Source:*  
Apache Powder Company,  
Benson, Arizona.

## IV.

In the year 1935 there were 87,913,579 pounds of refined copper, and in the year 1936 there were 126,922,000 pounds of refined copper in the shipments of fabricated products by Phelps Dodge Copper Products Corporation. With the exception of 2,178,073 pounds of copper in 1935, and 2,883,871 pounds of copper in 1936, the same being copper derived from scrap purchases, all of the copper was obtained from Phelps Dodge Corporation or its subsidiaries.

The shipments from the plants of Phelps Dodge Copper Products Corporation, expressed in percentages, for the years 1935 and 1936 were as follows:

<i>Plant:</i>	<i>Year 1935</i>	<i>Year 1936</i>
Bayway, New Jersey.....	85.7%	83.3%
Fort Wayne, Indiana ....	5.9	6.8
Yonkers, New York .....	8.4	9.9
	<hr/> 100%	<hr/> 100%



**Board's Exhibit No. 5.**

More than 50% of the copper contained in the fabricated products shipped from the various plants of the Phelps Dodge Copper Products Corporation was shipped out of the state in which the plant at which the fabricated product was produced is located.

**NATIONAL LABOR RELATIONS BOARD**By **DAVID PERSSINGER****Attorney****PHELPS DODGE CORPORATION, Respondent**By **ELLINWOOD & ROSS****WILLIAM A. EVANS****DENISON KITCHEL****Attorneys**

## Board's Exhibit No. 8.

Name TOM ABEDIN

Previous Record: 11/16/25 Continuous.

9½ years service with C &amp; A prior to merger.

Date	Emp. Record	Occupation
11/18/31	Relast	Miner
3/8/32	Dischgd	
2/13/34	ReEmp	Miner
6/10/35	Quit	

No. 1190-1014

No.	Remarks	Pension Service..... Years	Character of Service	Years
1190	Request of Lavender R.F.		Stopping & Clean Up	Sharp
1014	Request to Fisher Walked out when strike was called—Picketed all during strike.			

## Board's Exhibit No. 10.

Name WILLIAM DAY

Previous Record: 4/18/29 continuous.

2 yrs. service with C&amp;A prior to merger.

Date	Emp. Record	Occupation
11/1/31	Trans.	Mucker
4/29/35		Motor swmpr.
6/10/35	Quit	
6/6/35	Dischgd.	

No. 915-1535

No.	Remarks	Pension Service..... Years	Character of Service	Years
915	From C&A Payroll.			
1535	Walked out when strike was called and picketed all during strike.			
"	Creating trouble on the job and in the changeroom.			

## Board's Exhibit No. 13.

Name LEVIE CRANDAL

Previous Record: 3/22/27 continuous.

4½ Yrs. service with C&amp;A prior to merger.

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
11/ 1/31	Trans.	Miner	1188	Fisher	From C&A payroll			
12/31/31	"	"	442	Jewell	Ordered			
2/15/32	"	"	"	"	To Oklahoma.			
5/19/35	50 Day Fur.	"	1504	Ratterree	Walked out when strike was called and picketed.		Hard worked.	Sowerbutts
3/ 5/35	Trans.	"	"	"	Creating trouble on the job and in the changeroom.			
6/10/35	Quit	"	"	Pomeroy				
6/ 6/35	Dischgt.	"	"	"				

## Board's Exhibit No. 14.

Name EDGAR L. HARGUS

Previous Record: 6/10/24 Quit; 11/13/24 to 7/26/26 Quit; 10/29/26 to 12/29/26 Quit; 2/4/27 to 3/7/27 RF; 5/20/27 to 8/30/27 Quit; 10/31/27 Continuous.

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
7/12/30	Trans	Miner	3609	Sinclair				
11/ 1/31	"	"	400	Jewell	Jctn.			
12/31/31	"	"	1247	Fisher				
1/ 1/34	Chgd No.	"	1027	"				
4/29/35	Trans	"	1532	Ratterree	Walked out when strike was called and picketed all during strike.		Good stoop Or Drift	Kennaugh
6/10/35	Quit	"	"	"				



## Board's Exhibit No. 15.

Name JOHN HENRY KEY

Previous Record: 1/22/29 Continuous 4/12/30

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
11/25/30	ReEmp	Miner	777	Sinclair	Dropped			
5/30/34	ReEmp	"	412	Jewell				
11/7/34	Warned — not doing enough work.	"	"	Blinman				
6/10/35	Quit	"	"	Walton	Walked out when strike was called—Picketed for several weeks.			Blinman

## Board's Exhibit No. 16.

Name GEORGE EDWARD FRAZEE

Previous Record: 4/25/34 Continuous.

Father worked for C&amp;A for 16 Yrs.

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
4/25/34	Emp.	Mucker	394	Jewell				
9/12/34	Warned — Not taking care of tools and steel in slope.	"	"	Jewell				
6/10/35	Quit	"	"	Walton	Walked out when strike was called, Picketed several weeks.			

## Board's Exhibit No. 17.

Name JOHN FOLEY

Previous Record: 6/2/26 Continuous.

5½ years service with C&amp;A prior to merger.

No. 982

Pension Service..... Years  
Character of Service Boss

Date	Emp. Record	Occupation	No.	Boss	Remarks
11/ 1/31	Trans	Motor	982	Fisher	From C&A payroll.
2/15/35	Drop	"	"	"	Working in Mohave, California.

## Board's Exhibit No. 18.

Name EDWARD J. BOWDEN, JR.

Previous Record: 6/21/20 10/18/24 to 3/24/27 Quit; 8/20/27 Continuous.

No. 3832-3419-1158-1537

Pension Service..... Years  
Character of Service Boss  
Good Stope Miner Calford  
Good Drift. Lyons  
Good Stope Miner Ralph

Date	Emp. Record	Occupation	No.	Boss	Remarks
9/14/30	Trans	Miner	3832	Sinclair	
4/ 6/31	Trans	"	3419	Brownlie	
11/ 1/31	"	"	1158	Fisher	
4/29/35	Trans	"	1537	Ratterree	
6/10/35	Quit	"	"	"	Walked out when strike was called and picketed all during strike.

## Board's Exhibit No. 19.

Name PAUL AMARO

Previous Record: 2/16/34 Continuous.

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
2/16/34	ReEmp	Miner	1024	Fisher				
5/ 9/35	Trans	"	1540	Ratterree				
6/10/35	Quit	"	"	"	Walked out when strike was called and picketed throughout strike.			

## Board's Exhibit No. 20.

Name WILFORD DAVID MORTENSON

Previous Record: 7/3/29 to 1/28/30 RF; 4/2/34 continuous.

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
4/ 2/34	Re Emp	Mucker	362	Jewell				
6/10/35	Quit	Miner	"	Walton	Walked out when strike was called and picketed first few weeks of strike.			





## Board's Exhibit No. 23.

Name WILLIAM DOUGHERTY

No. 3773-425-432

Previous Record: 9/25/24 to 4/8/26 Quit; 8/11/28 to 9/4/28 Quit; 4/14/29 to 10/19/29 Quit; 3/6/31 Continuous.

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service.....	Years	Character of Service	Boss
3/ 6/31	ReEmp	Mucker	3773	Jewell	Placed to work at Request of Management				
8/ 5/31	Dischgd	"	432	"	RF. Can only be used as a chute checker.				Finotti
6/ 1/34 10/15/34	ReEmp Drop	"	425	Jewell	Got his eye hurt and thinks he is crippled for life—Doesn't like to work anyway. Services Unsatisfactory — Not heavy on the work. Surly disposition and bosses don't like him.				Sowerbutts

**Board's Exhibit No. 24.****PHELPS DODGE CORPORATION****COPPER QUEEN BRANCH****Labor Department****Box 630****Bisbee, Arizona****FEBRUARY 10, 1934**

**MR. TEM ABEDIN,  
General Delivery,  
Loweel, Arizona**

**DEAR SIR:**

If you will call and see me at 8:00 a. m., Monday, February 12, 1934, I will have you examined for re-employment Underground.

**Yours very truly,**

**M. A. BATEMAN**

**M. A. BATEMAN  
Employment Agent.**

**MAB.**



## Board's Exhibit No. 25.

Name GROVER DEE WINDSOR

Previous Record: 6/8/34 continuous.

3 yrs. Tr. Dr.—P. D. M. Co.

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
6/8/34	Emp	Mucker	481	Jewell	Walked out when strike was called—Whole family also—Was on Picket line all during strike—Arrested for beating up Larry Kuder.			
6/10/35	Quit							

## Board's Exhibit No. 26.

Name JOE DUNKERSON

Previous Record: 9/3/37 Continuous.

8½ years service with C&amp;A prior to merger.

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
11/1/31	Trans	Tramman	1010	Fisher	Fr. C&A payroll #8412			
1/11/35	Warned—Doing insufficient work			Hannon				
4/29/35	Trans	Tramman	214	Walton	Ordered Requested			
5/8/35	Trans	Mucker	1534	Batterree	Walked out when strike was called and picketed all during strike.			
6/10/35	Quit							

## Board's Exhibit No. 27.

Name VERNON CURTIS

Previous Record: 9/1/27 Continuous.

4 years prior service with C&amp;A

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
11/ 1/31	Trans	Motor Sempr	313	Jewell	From C&A payroll			
12/31/31	"	"	1237	Fisher	Request of Fisher			
1/18/32	"	"	229	Jewell	Taken off motor and told Walton to write it out. Was on motor for seven years. Thinks he got a bad deal.		Good Motor Swamper & Mucker	
6/15/34	Quit	"	"	Walton				

## Board's Exhibit No. 28.

Name GROVER CORNETT

Previous Record: 4/4/29 to 2/19/30 RF; 6/10/35 Continuous.

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
6/10/35	ReEmp	Mucker	973	Marshall	Went out in the picket line instead of going to work—Highly recommended by J. W. Fisher.			



# Board's Exhibit No. 29.

Name MARTIN VACLAV

Previous Record: 8/25/27 continuous.

4 1/4 yrs. service with C&A prior to merger.

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service.....	Character of Service	Years	Boss
11/ 1/31	Trans.	Miner	312	Jewell	From C&A payroll.				
12/31/31	"	"	1005	Fisher					
6/10/35	Quit	"	"	Marshall	Walked out when strike was called—On Picket Line.				

631

# Board's Exhibit No. 30.

Name MONTAGUE L. REED

Previous Record: 3/24/24 to 4/16/25 RF; 1925 to 1930 RF; 9/1/33 continuous.

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service.....	Character of Service	Years	Boss
9/ 1/35	Re emp	Master	313	Jewell	Walked out when strike was called—Best up on Kruder and was held in custody by Sheriff's Office.				
6/10/35	Quit	Shaftman	"	"					



## Board's Exhibit No. 31.

Name CLYDE BIGELOW

No. 3821-3425-389 968-389-1090

Previous Record: 8/20/20 and intermittent to 6/8/28 9/7/28 Continuous

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
9/10/30	Trans	Miner	3821	Sinclair			Good Drift	Lyons
4/ 6/31	Trans	"	3425	Brownlie			Good all round miner.	Stetson
11/ 1/31	"	"	389	Jewell			Good Slope Miner	McCloskey
12/31/31	"	"	968	Fisher				
2/15/32	"	"	389	Jewell	Ordered RF. Below Average. Ranch Owner. Hardly an average Slope Miner			
5/25/32	Dched	"	"	"				
1/22/34	ReEmp	"	1090	Fisher				Fuller
6/10/35	Quit	"	"	Marshall	Walked out when strike was called and picketed, as well did his wife.			

## Board's Exhibit No. 32.

Name MILTON LEWIS WYNN

No. 496

Previous Record: 6/14/34 cont.

Vacation 1924.

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
6/14/34	Re emp	Mocker	496	Jewell				
6/10/35	Quit	"	"	Walton	Walked out when strike was called			

# Board's Exhibit No. 33.

Name ALEK KALASTRO

Previous Record: 6/4/34 Continuous.

3 1/2 Months for C&A—Father worked for C&A over 25 yrs. now deceased.

Date	Emp. Record	Occupation	No.	Boas	Remarks
5/4/34	ReEmp	Mucker	1170	Fisher	
6/10/35	Quit				Walked out when strike was called.

No. 1170

Pension Service..... Years  
Character of Service Boas

633

# Board's Exhibit No. 34.

Name WILLIAM HENRY BIGELOW

Previous Record: 1907 1/6/23 Continuous.

Date	Emp. Record	Occupation	No.	Boas	Remarks
9/10/30	Trans	Miner	3836	Sinclair	
9/6/31	Dischd				
5/30/34	ReEmp	Miner	417	Jewell Walton	
6/10/35	Quit				Walked out when strike was called—Was on picket line and as well was his wife and mother.

No. 3826-417

Pension Service..... Years  
Character of Service Boas  
Average Repairman Warner

RF.  
Walked out when strike was called—Was on picket line and as well was his wife and mother.



**Board's Exhibit No. 35.**

Name **WILLIAM HIRIAM WINDSOR**

Previous Record: 9/5/33 continuous.

8 1/2 yrs. with C&A prior to merger.

Date	Emp. Record	Occupation
9/ 5/33	Re emp	Miner
6/10/35	Quit	

No.	Boz
981	Fisher Marshall

Remarks

Walked out when strike was called—with all the rest of the family—Was on picket line through strike.

Pension Service..... Years  
Character of Service      Boz

**Board's Exhibit No. 36.**

Name **ELLIS MARION SCALES**

Previous Record: 2/25/26 continuous.

Date	Emp. Record	Occupation
3/26/28	Trans.	Miner
12/31/31	"	"
6/10/33	Quit	

No.	Boz
3865	Jewell
1202	Fisher Marshall

Remarks

Walked out when strike was called and picketed all during strike.

Pension Service..... Years  
Character of Service      Boz  
Good motorman & mucker.      Blinman.



## Board's Exhibit No. 37.

Name: FRANK HAROLD ERKKILA

Previous Record: 6/11/34 Continuous

Worked for Dem 2 years.

Date: Emp. Record

6/11/34 Emp.

6/18/35 Quit

Occupation

Mucker

No.

1198

Boss

Fisher  
Marshall

Remarks

Walked out when strike was  
called and picketed all during  
strike.

Pension Service..... Years

Character of Service

Boss

## Board's Exhibit No. 38.

Name: LUKE SPENTICK (Sertick)

Previous Record: 1/13/24 to 8/15/30 Quit; 9/5/33 continuous.

Date: Emp. Record

9/1/33 No Emp.

6/18/33 Quit

Occupation

Miner

No.

311

Boss

Jewell  
Walton

Remarks

Walked out when strike was  
called and picketed all during  
strike.

Pension Service..... Years

Character of Service

Boss

### Board's Exhibit No. 39.

Name MERRELL ERNEST JOHNSON

Previous Record: 1/12/34 Continuous.

1928 to 1931 C&A

Date	Emp. Record	Occupation	No.	Boat	Remarks	Pension Service..... Years	Character of Service	Boat
1/12/34	ReEmp	Mecher	1078	Mecher				
4/29/35	Trans	"	1553	Batteries	Walked out when strike was called and picketed			
6/10/35	Quit							

636

### Board's Exhibit No. 40.

Name GEORGE GERHARDT

Previous Record: 9/1/1910 8/30/22 Cont.

Date	Emp. Record	Occupation	No.	Boat	Remarks	Pension Service..... Years	Character of Service	Boat
8/ 2/23	chg #	Sharpen	5666	Hart				
11/ 1/30	Chg. No.	"	5149	"				
4/ 1/32	"	"	5116	"				
6/10/35	"	"	5116	"	Walked out when strike was called			

## Board's Exhibit No. 41.

Name WILLIAM D. GRAHAM

No. 1195

Previous Record: 3/15/29 to 9/2/30 Quit; 6/11/34 Continuous

Pension Service..... Years  
Character of Service Boss

Date	Emp. Record	Occupation	No.	Boss	Remarks
6/11/34	Re Emp	Mucker	1195	Fisher	Walked out when strike was called and picketed all during strike.
6/10/35	Quit			Marshall	

## Board's Exhibit No. 42.

Name WILLIAM EDWARD SHARP, JR.

No. 5788

Previous Record: 7/20/29 to 1/13/30 RF; 6/10/35 continuous.

Pension Service..... Years  
Character of Service Boss

Date	Emp. Record	Occupation	No.	Boss	Remarks
6/10/35	Re Emp	Helper	5788	Larsen	
6/10/35	Did not report for work when strike was called — Bad actor on picket line.				
6/28/35	Dropped	Helper	5788	Larsen	Worked one day June 11, 1935, only.



## Board's Exhibit No. 43.

Name LESTER F. BETHEL

Previous Record:

No. 494-234-1548

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
7/11/32	Dropped							
9/ 8/32	ReEmp	Mucker	234	Jewell	Unable to resume work after being paid one year's benefits. (Request of Management)			
4/ 9/35	Trans	Miner	1548	Ratterree				
6/10/35	Quit				Walked out when strike was called and picketed.			

## Board's Exhibit No. 44.

Name MIKE MIHELICH

Previous Record: 4/14/16 Continuous

15 1/2 years service with C&amp;A prior to merger.

No. 206-1175-221

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
10/ 1/31	Trans	Pipeman						
11/ 4/31	"	"	1175	Jewell	C&A Merger—15 1/2 years prior service at C&A			
1/12/32	"	"	221	Fisher	Request of Dymock to Gary, Ind.			
6/ 8/32	30 Furl.	Ventilation	"	Jewell				
6/10/35	Quit	"	"	"	Quit when strike was called.			

**Board's Exhibit No. 45.**

Name **PETED D. CARETTO**  
 Previous Record: 8/29/33 Continuous  
 10 year 8/2/22 to 10/31/31 for C&A

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
8/29/33	ReEmp	Cager	273	Jewell	Request of Management.			
4/29/35	Trans	Miner	1556	Ratterree	Walked out when strike was called and picketed			
6/10/35	Quit							

**Board's Exhibit No. 46.**

Name **HENRY CLYDE WATERS**  
 Previous Record: 7/10/31 continuous. 8/6/27 to 4/24/28 Quit; 11/7/28 to 7/17/30 RF.

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
7/10/31	Re Emp	Miner	3465	Brownlie				
8/ 6/31	Dischgd.				R.F.			
1/15/34	Re emp	Miner	372	Jewell				
4/ 9/35	Trans.	"	1539	Ratterree				
6/10/35	Quit				Walked out when strike was called and picketed during most of strike.		Avg. Stope Miner.	Palmer

**Board's Exhibit No. 47.**

Name PHILIP C. LYTLE

Previous Record: 9/22/27 Continuous

4 years service with C&amp;A prior to merger.

Date	Emp. Record	Occupation
11/ 1/31	Trans	Timberman
6/ 2/34	"	"
6/10/35	Quit	"

No.	Boz	Remarks
1013	Fisher	from C&A Payroll #8457
1520	Batterrec	Walked out when strike was called.

Pension Service.....	Years	Character of Service	Boz
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No. 1013-1520

**Board's Exhibit No. 48.**

Name JESSE EDGE

Previous Record: 6/29/29 Continuous

2½ years service with C&amp;A prior to merger.

Date	Emp. Record	Occupation
11/ 1/31	Trans	Motor Helper
12/31/31	"	"
2/15/32	"	"
6/10/35	Quit	"

No.	Boz	Remarks
229	Jewell	From C&A payroll #3664
1297	Fisher	Ordered
289	Jewell	Walked out when strike was called picketed daily at Junction all through strike.

Pension Service.....	Years	Character of Service	Boz
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No. 229-1297-289



# Board's Exhibit No. 49.

641

Name H. I. MONTGOMERY

Previous Record 1909-10/17/18 Continuous

Pension Service..... Years  
Character of Service Boss

Date	Emp. Record	Occupation	No.	Boss	Remarks
8/ 1/27	Chgd. No.	Operator	6523	Moore	
10-28-31	Trans	Watchman	5953	Salmon	
5/ 1/32	Chgd No	B M H	5773	Jones	Not enough work.
9/11/33	Trans	"	"	"	Orders H. C. H.
7/ 3/34	Dischgd	"	"	"	Walked out when strike was
7/20/34	Reinst	"	"	"	called. (Worked first three
6/13/35	Quit	"	"	"	days.)

# Board's Exhibit No. 51.

Name J. M. MORRIS

Previous Record : 6/28/26 continuous.  
5 years service with C&A prior to merger.

Pension Service..... Years  
Character of Service Boss

Date	Emp. Record	Occupation	No.	Boss	Remarks
11/ 1/31	Trans.		985	Fisher	from C&A payroll.
6/10/35	Quit		"	"	Walked out when strike was
					called.

## Board's Exhibit No. 52.

Name LEONARD GUESS

Previous Record: 11/18/27 continuous

4 1/2 years service with C&amp;A prior to merger.

Date	Emp. Record	Occupation
11/17/31	Reinst	Mucker
1/14/35	Quit	Motorman

No. 1186

Boss Fisher

Remarks

Request of Management  
Bought out beer and sandwich  
joint in Douglas.
 Pension Service..... Years  
 Character of Service Boss

## Board's Exhibit No. 53.

Name FRANK PETERSON

Previous Record: 1/22/34 continuous.

Feb. 1929 to Feb. 1930 for C&amp;A.

Date	Emp. Record	Occupation
1/22/34	Re emp	Mucker
6/10/35	Quit	Miner

No. 1085

Boss Fisher  
Marshall

Remarks

Walked out when strike was  
called and picketed during most  
of strike.
 Pension Service..... Years  
 Character of Service Boss



# Board's Exhibit No. 54.

643

Name HARVEY DOLPH EDGE  
Previous Record: 1/19/24 Continuous

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
7/24/30	Trans	Miner	236	Colford				
6/11/31	"	"	3434	Brownlie				
11/ 1/31	"	"	965	Fisher				
6/10/35	Quit	"	"	Marshall	Div. B. Walked out when strike was called and he and wife picketed all during strike.		Good—Stope & Repairs	McCloskey

# Board's Exhibit No. 55.

Name BEN HARRISON STRINGER  
Previous Record: 6/5/24 continuous.  
4 yrs. for C&A prior to merger.

Date	Emp. Record	Occupation	No.	Boss	Remarks	Pension Service..... Years	Character of Service	Boss
6/ 5/34	Re Emp	Mucker	446	Jewell				
6/10/35	Quit	"	"	Walton	Walked out when strike was called and was on picket line.			



## Board's Exhibit No. 56.

Name GEORGE C. ROHRER

Previous Record : 11/8/28 continuous.

3 yrs. service with C&amp;A prior to merger.

Date	Emp. Record	Occupation
11/ 1/31	Trans.	Mucker
5/19/33	50 Day Furl.	M. S.
6/10/35	Quit	

No.

453

Boss

Jewell

Remarks

From C&A payroll #9644.  
To Oklahoma.  
Walked out when strike was  
called and joined pickets.

Pension Service..... Years

Character of Service

Boss

## Board's Exhibit No. 57.

—COPY—

JUNE 10, 1935.

## AIR MAIL

MR. LOUIS S. CATES, President  
Phelps Dodge Corporation  
40 Wall Street  
New York, N. Y.

DEAR MR. CATES:

Last week at Bisbee the Mine Department sent over to the Cole Shaft four or five non-union men to fill vacancies in that mine. As you know, the personnel of the Cole Mine is largely union as we have tried to segregate the union men there.

When these non-union men went over there was intimidation and coercion towards them on the part of the union men, who would leave their working places and visit the non-union men in the mine and be abusive to them. Later one of these non-union men was prevented from using the change room. Still later there was a fight up town between one of these non-union men and one of the union men. The situation was quite fast getting to the point where members of the Employees Association were asking if they were going to get protection and freedom from intimidation while working over at the Cole; and as to whether the company was going to run the Cole Mine, or the Union bunch.

As a result of all this the Mine Department laid off about seven men at the Cole Mine who had been responsible for this situation. As a result the union leaders called a strike, which went into effect this morning. As I wired you, there seem to be about 100 to 110 men on the picket line, perhaps half of which number were on our payroll and most of whom were the ones working at the Cole Mine. They tell me that



**Board's Exhibit No. 57.**

over 90% of the Junction and Campbell men are working as usual and so far as I can see the situation is not taken very seriously by the non-union men. So far the picketing is peaceful and I hope will remain so.

I am sorry, of course, that this thing has come about, but, honestly, I feel that it had to come sometime and our union friends are so deplorably weak at the present time that it might just as well come now as later. For some time their feeling has been that they might just as well try and pull a strike as continue to lose out in the way they have been doing and finally get sunk without making a little "play" first.

It is never wise, of course, to under-estimate these things, but at the present writing it does not look very serious. I presume the next move will be that the union men will holler for help from somebody and want arbitration, which we shall decline.

If I am not here myself after tomorrow, I shall see that you are kept well advised.

Yours very truly,

Vice-President and  
General Manager

PGB/d

Enc.

(Extra of LABOR NEWS, June 7, 1935)

(Hand Bill calling strike)



**Board's Exhibit No. 58.****COPY OF WESTERN UNION TELEGRAM****DOUGLAS ARIZONA JUNE 10 1935**

**L S CATES PRESIDENT  
PHELPS DODGE CORPORATION  
40 WALL STREET NEW YORK N Y**

**IN LAST FEW DAYS NON UNION MEN SENT TO  
COLE MINE WERE COERCED AND INTIMIDATED  
BY UNION MEN SEVEN OF WHOM HAVE BEEN DIS-  
CHARGED (STOP) MINERS UNION THIS MORNING  
HAS PULLED STRIKE AT BISBEE (STOP) PICKET  
LINE CONSISTS OF ABOUT ONE HUNDRED MEN  
APPROXIMATELY HALF OF WHOM ARE EM-  
PLOYED (STOP) VERY FEW WORKING AT COLE  
BECAUSE PRACTICALLY ALL UNION MEN WERE  
WORKING THERE BUT AT CAMPBELL AND JUNC-  
TION OVER NINETY PERCENT OF NORMAL DAY  
FORCE IS WORKING (STOP) EVERYTHING PEACE-  
FUL (STOP) WRITING AIR MAIL TODAY**

**P. G. BECKETT**

**Charge: Phelps Dodge Corpn  
(Office of General Manager)**

**Board's Exhibit No. 59.****COPY****AUGUST 6, 1935**

**MR. LOUIS S. CATES**  
**c/o SUDDEN & CHRISTENSON**  
**310 Sansome Street**  
**San Francisco, California**

**DEAR MR. CATES:**

I find on my return from the Coast that there is very little new to advise you of in regard to the labor situation at Bisbee. Some days there are practically none on the picket line and then again we have days when there may be thirty or forty. All in all, the last two weeks it has been quite quiet with the exception of a little powder that was exploded in an empty house but which did no particular damage.

The State Federation of Labor people had a meeting in Tucson the other day, as per the enclosed clipping. I understand that a Federation committee of local people, some of them Douglas boys, has been appointed to see the management and find out if they can act as conciliators, etc. They will, of course, be told that there is no way that they can help.

I have not had time yet to get any figures on the Bisbee production and development work for last month, but I am sure that it was up from the previous month.

Yours very truly,

**Vice-President and  
General Manager**

**PGB/d**

**Enc.**

**cc: LSC—New York**

**Board's Exhibit No. 60.****COPY****AUGUST 13, 1935**

**MR. L. S. CATES, President,  
PHELPS DODGE CORPORATION,  
40 Wall Street,  
New York, N. Y.**

**DEAR MR. CATES:**

I am enclosing herewith two copies of letter from Mr. Henrie reporting on meeting with Committee representing The Arizona State Federation of Labor, held at Bisbee, August 9th, 1935.

**Very truly yours,**

**P. G. BECKETT,  
Vice-President and  
General Manager**

**By**

**JHD-B  
cc-LSC San Francisco**



*Board's Exhibit No. 60.*

COPY

**PHELPS DODGE CORPORATION  
COPPER QUEEN BRANCH, MINES DIVISION  
BISBEE, ARIZONA**

**AUGUST 10, 1935**

**MR. P. G. BECKETT,  
Vice President and General Manager,  
Phelps Dodge Corporation,  
Douglas, Arizona.**

**Memorandum Covering Meeting with  
Committee Representing  
The Arizona State Federation of Labor,  
August 9, 1935**

**DEAR MR. BECKETT:**

A conference was held with a Committee representing the Arizona State Federation of Labor on Friday, August 9, 1935, at 1:30 p. m.

Messrs. E. F. Vickers, Fred Broughton, Roy Whitlow, of Douglas, Andy Holohan of Phoenix; and J. Durkin of Tucson composed the Committee.

Mr. I. H. Barkdoll and Mr. H. C. Henrie represented the Company.

Mr. Vickers opened the meeting by stating that the Bisbee Miners' Union had requested a Committee of the State Federation of Labor to meet with the Management of the Company in order to see what might be accomplished towards settling the strike at Bisbee.

Mr. Vickers stated that the Committee had been conferring for two days with representatives of the Bisbee Miners' Union and were sufficiently informed as to their side of the case, and added that no doubt the Company's version of existing conditions was different. However, he felt that something might be accomplished towards effecting

*Board's Exhibit No. 60.*

a settlement of the present difficulty by talking the matter over.

Mr. Holohan stated that we were no longer in the horse and buggy days, and that it should no longer be necessary to resort to force and strikes in order to compose existing difficulties.

Mr. Broughton added that he thought something might be accomplished through a discussion of the matter.

Mr. Barkdoll advised the Committee that he was quite agreeable to discussing the matter with them.

Mr. Durkin then stated that the matter would very easily be settled by the Company entering into a contract with the Bisbee Miners' Union. Such an arrangement would automatically stop the strike and provide a method whereby any grievances could be quickly and fairly settled.

Mr. Vickers then presented the Miners' Union version of the present trouble. Briefly he stated that the Union was formed and in a short time practically all employees of the Mines Division were members of this Union, following which the Company began discharging members of the Union for their affiliations. These wholesale discharges had the effect of so intimidating the membership that many of the employees who were in sympathy with the Miners' Union withdrew from the Union in order to preserve their jobs.

Mr. Vickers stated that the Committee had been informed that all of the men discharged were good workmen, men who had earned bonus consistently, and that they had been discharged because of their Union activity and not for cause. If these men had been discharged for cause, or for not doing their work, he felt that the men would have no grievances.

Mr. Durkin took up the story from this point and stated that an election had been held July 18, 1934, which was won by the Union, and the Company deliberately disregarded the wishes of the majority of its employees and ignored the Labor Board's decision. The Company also fought this decision through the various Labor Boards, knowing full well

*Board's Exhibit No. 60.*

that the Courts had no authority to enforce the Regional Labor Board's ruling. The net result of all of this campaign of intimidation resulted in reducing the membership in the Miners' Union to a mere handful; whereas, the great majority of the employees were anxious and willing to become members of this organization but would not join due to fear of losing their jobs.

Mr. Vickers then stated that eight leaders, working at the Cole Shaft, were discharged in a group for their Union activity, and that these men were not even told why they were discharged. Naturally, the Union felt that some action had to be taken for self-preservation.

Mr. Vickers added that everyone made mistakes and the Miners' Union made a mistake in calling the present strike. The Miners' Union had made many other mistakes. However, in his opinion, the easiest way to effect a settlement was to ignore the mistakes which had been made and make an honest attempt to compose the difficulty.

At the request of Mr. Barkdoll, I very carefully outlined the labor conditions in the District for the past two years, and stressed the point that no employee had been discharged for Union activity, but in each and every case there was sufficient cause to warrant the discharge; also, that practically all of these discharge cases had been reviewed by mediators or conciliators of the Department of Labor; that the Regional Labor Board had either formally or informally reviewed practically every case; and outlined the results of the hearing held by the Regional Board in Bisbee last fall where the Regional Labor Board decided that the cases presented warranted discharge.

The July 18th election was also reviewed and it was pointed out that at no time did the Bisbee Miners' Union have a majority of the employees as bona fide members of their organization; whereas, the Employees' Association, since last August, could show a membership in excess of seven hundred. The condition existing at the Cole Shaft,



*Board's Exhibit No. 60.*

prior to the discharge of certain men last June, was reviewed and the reasons for their discharge outlined.

At this point in the discussion, Mr. Durkin took the floor and entered into a tirade against company Unions and stated that the Phelps Dodge Corporation, through its policy of intimidation, had wrecked the Miners' Union, and that the Employees' Association was formed, dominated and owned by the Company, and that the majority of the men in that organization were members simply because they felt that their jobs were not secure unless they did join the Employees' Association.

I advised Mr. Durkin that I had endeavored to speak quite frankly and fairly on the matter and any statement I had made could be supported.

Mr. Durkin replied that it, of course, was the Company's story and he knew from talking with the other side just what the true picture was. In other words, he doubted it.

Mr. Whitlow then gave a rather rambling talk covering the period from 1916 to date. He stated he had worked for the Company during that period; had served as employees' representative and he knew there were many grievances, unfair practices, unfair conditions; that during the present trouble, the Company had hired boys not of legal age to work in the mines; that he himself had filed a complaint in one such case; and that recently he had been employed at the New Cornelia Branch and while he was there he had been solicited by a Foreman to join the Employees' Representation Plan, which showed conclusively that the Company established these Plans and the Employees' Association in Bisbee.

Mr. Whitlow then outlined the very satisfactory conditions existing on the railroads, due to contracts with the Brotherhoods, and stated that a similar condition would exist if a contract was entered into with the Bisbee Miners' Union.

*Board's Exhibit No. 60.*

Mr. Vickers then portrayed what he termed the terrible conditions which used to exist at the Bisbee Daily Review, and how all these conditions had been corrected through entering into a contract with the Typographical Union.

Mr. Whitlow then suggested that the strikers be reinstated by the Company, following which negotiations would be started towards working out a contract.

Mr. Barkdoll advised the Committee that it would be impossible to reinstate these men who had quit the service of the Company. Their jobs had been filled and the present working force would not stand for their being reinstated.

An attempt was made to outline the feeling which existed between the two groups and impress the Committee with the fact that two irreconcilable groups did actually exist prior to the strike. Also, that the men unquestionably would refuse to work with the strikers should they be reinstated.

Mr. Durkin then stated that if we wanted to co-operate, that might be a good way to bring the entire matter to a head, namely, to allow the present employees to strike in protest and then the Company could get the two groups together and have them iron out their difficulties. He was sure that they would all agree to a contract with the A. F. of L.

We again advised the Committee that the men who had quit could not be reinstated. Following which, Mr. Durkin reminded me that the Committee had simply come in to discuss the matter and that I had in effect told them "to go to Hell."

An attempt was made to correct this impression, but Mr. Whitlow then stated that the Committee had asked nothing from the Company; the Committee did not ask that these men be reinstated; but the Committee conferred with us simply to see what suggestions we had to offer, and the Company did not have a single suggestion. Therefore, there was nothing further to discuss.

Mr. Barkdoll agreed with Mr. Whitlow that nothing further could be accomplished.

*Board's Exhibit No. 60.*

Mr. Vickers stated that unless a settlement was effected, the picket lines would be continued indefinitely because the striking workmen were on relief.

Mr. Barkdoll again outlined conditions prior to the strike, particularly those which existed at the Cole Shaft, and reiterated that the feeling between the two groups was too great for the Company to reinstate any of the strikers.

The Committee expressed regret that their efforts had been unsuccessful and Mr. Durkin stated that it was evident that the Phelps Dodge Corporation did not intend to meet the men half way, but expected to continue their campaign of intimidation and coercion which has been prevalent for the past two years in the Warren District.

I would say that the Committee did not expect to secure favorable results; that the majority of the Committee felt they were properly received; that the Committee knew that they had a hopeless case to plead and did all they could to secure some concession for the strikers.

I would also say that Messrs. Durkin and Whitlow are rather bitter and antagonistic towards the Corporation; whereas, Messrs. Vickers, Broughton and Holohan realized the true situation and were simply doing what they could to make a good case for the Union.

Yours very truly,

(Signed) H. C. HENRIE

HCH:P



**Board's Exhibit No. 61.****COPY****AUGUST 27, 1935.****AIR MAIL**

**MR. LOUIS S. CATES, President  
PHELPS DODGE CORPORATION  
40 Wall Street  
New York, N. Y.**

**DEAR MR. CATES:**

Herewith three copies of letter from Mr. Henrie reporting on conference with committee representing Bisbee Miners Union, held Friday, August 23rd.

Yours very truly,

**P. G. BECKETT  
Vice-President and  
General Manager**

By

**JHD/d  
Enc.  
(Aug. 24, 1935)**

*Board's Exhibit No. 61.*

**COPY**

**PHELPS DODGE CORPORATION**  
**COPPER QUEEN BRANCH, MINES DIVISION**  
**BISBEE, ARIZONA**

**AUGUST 24, 1935**

**MR. P. G. BECKETT,**  
**Vice President and General Manager,**  
**PHELPS DODGE CORPORATION,**  
**Douglas, Arizona.**

**Memorandum Covering Conference**  
**with a Committee Representing Bisbee Miners' Union**  
**Held Friday, August 23, 1935**

**DEAR MR. BECKETT:**

A conference was held with a Committee representing the Bisbee Miners' Union, Friday, August 23rd, at 2:30 p. m.

Messrs. William Day, Dave Lytle and A. B. Potter composed the Committee representing the Miners' Union.

Mr. Day, President of the local Union, stated he had requested this conference since he believed that by talking a few matters over, the present strike might be settled.

Mr. Day then explained that just prior to the strike, six or seven men employed at the Cole Shaft had been discharged. These cases had never been taken up by the local Union and he felt that a fair investigation, made by a joint committee of some kind, would show that some of the men who were discharged were entitled to reinstatement.

I advised the Committee that the men who had been discharged should have taken their cases up at the time, instead of calling a strike.

Mr. Day stated it probably would have been better to have done that, but it was not done. A strike had been called,

*Board's Exhibit No. 61.*

but he still felt that these cases should be reviewed by an impartial committee.

I advised Mr. Day that the Company had nothing to arbitrate on the discharge cases referred to. Conditions which existed at the Cole just prior to the discharge of these men were explained to the Committee, and the reason why these men were discharged was also explained.

Mr. Potter then inquired what the Company could do to settle the present trouble, and stated that if the men who still remained in the District were put back to work, the strike could be settled.

I advised the Committee that two conferences had been held on this matter—one with a Committee composed of representatives of the State Federation of Labor; the other with representatives from the local Union and Dr. Nylander. The position of the Company as outlined in the two former conferences had not changed, and there was nothing new to add on the subject.

Mr. Lytle inquired as to whether the Company representatives had stated that they would not reinstate six or eight of the men who were at present out on strike.

Mr. Lytle was advised that no such statement had been made, and that the position of the Company on this matter was exactly the same as outlined in the previous conferences.

The Committee then decided there was nothing further to discuss and the meeting adjourned.

Yours very truly,

(Signed) H. C. HENRIE  
Assistant  
General Superintendent.

HCH:P



**Board's Exhibit No. 61.****August 26, 1935**

The Bisbee Miners' Union, on Saturday, August 24th, voted to terminate the present strike.

The vote, which was by secret ballot, resulted in thirty votes for terminating the strike and ten votes for continuing.

We may experience a little difficulty from some of the men who will seek reinstatement, since I am advised that the Officers of the Union told their members at Saturday night's meeting that many of them would be re-employed by the Company.

The local Union had advised the International Officers that the strike has been terminated.

## Board's Exhibit No. 62.

COPY

JULY 14, 1937

AIR MAIL

MR. L. S. CATES, President,  
PHELPS DODGE CORPORATION,  
40 Wall Street,  
New York, N. Y.

DEAR MR. CATES:

Yesterday, Tuesday, near the entrance to the Junction and Campbell Mines were groups of C. I. O. distributing hand-bills, a sample of which is enclosed. Some of these distributors were former employees of Phelps Dodge who went out on strike in 1935 and were subsequently employed by the Shattuck-Denn. Whether any outside organizers were present has not yet been determined.

The incident in itself is unimportant except that it shows a change in tactics. While literature of a similar nature has been previously distributed in the Bisbee District, this marks the first time since 1935 that they have attempted solicitation on or adjoining Phelps Dodge property. The thought occurs that the C. I. O. is attempting a "Ford Demonstration" in the hope that we will counter with some aggressive measures which would give them a wonderful opportunity to cry "Oppression" and appeal to the N. L. R. B. for a hearing, which would be granted without a shadow of doubt. We have instructed our watchmen to ignore these groups as long as they stay outside the company fenced property and are cautioning the employees to likewise ignore them. This, I think, is the most effective measure and will be our present policy if the C. I. O. continues their propaganda.

We are hopeful that any open conflict can be avoided but the situation in the District is such that a clash between the two groups might occur at any time. I was also told, confidentially, that a showdown is inevitable between the

*Board's Exhibit No. 62.*

Union and Shattuck-Denn. The 3rd of July night shift was turned back at the collar of the Denn Shaft by the leaders and this and other acts indicate that the Union may at any time insist upon a closed shop with check-off which I am told will not be granted.

I am not alarmed over this latest move but am simply passing it on for your information.

Yours very truly,

General Manager.

HML-B

Encl.

**COPY**

**JULY 17, 1937**

**AIR MAIL**

**MR. L. S. CATES, President,  
PHELPS DODGE CORPORATION,  
40 Wall Street,  
New York, N. Y.**

**DEAR MR. CATES:**

I am enclosing herewith a copy of the latest handbill passed out at the gates of the Junction and Campbell shafts, yesterday, Friday afternoon. Shuper, state organizer for C. I. O., is in charge of these men who again resumed distribution of this literature. About eight men were stationed near the Junction gate and four at the Campbell.

We will continue our policy of ignoring their presence as long as they stay outside the property fence, and will attempt to have the men and authorities do likewise. As before explained, it is so very evident the objective they are asking that we are determined not to play into their hands.

Yours very truly,

General Manager.



**Board's Exhibit No. 63.****COPY****JUNE 25, 1935****AIR MAIL****MR. LOUIS S. CATES, President****PHELPS DODGE CORPORATION****40 Wall Street****New York, N. Y.****DEAR MR. CATES:**

As I wired you this morning, there was a little mixup at the Junction gate this morning in which Smith, one of the leaders of the union got a shot in the shoulder from one of our watchmen at the gate. The early information that I had when I wired you as to the head watchman being struck was incorrect. What actually happened was that, as has been the practice for the past week or so the strikers on the picket line have on several occasions attempted to make a rush towards the gate and to get through. At the end of last week things were getting very quiet and Vic Smith, who has been prominent throughout these union activities for the past year in Bisbee, showed up from Ft. Huachuca where he had been; and this morning was doing a lot of noisy talking and inciting a small bunch of his followers to make a rush for the gate. Reifsnider and the head watchman who were at the gate repeatedly told the picket line to get back from the gate. Smith, however, with another striker called Slaughter shouted to the men behind them to follow and rushed at Reifsnider with knives, and one of our watchmen at the gate winged Smith in the shoulder. He has since been taken to the County Hospital where to date it does not look like a very serious matter for him, as the bullet has been extracted satisfactorily. The sheriff and two deputies were reasonably close to the scene of the incident.

*Board's Exhibit No. 63.*

I understand that the strike leaders this morning went to the sheriff and the County Attorney and told them that from now on the picketing was going to be peaceful and that the rough stuff would be cut out. But in a situation like this it is pretty hard to forecast what may or will happen, regardless of what people say. The men that are working are getting badly fed up with this small crowd of strikers and unemployed who boo them and abuse them as they go through the gates coming on and off shift and their patience may soon get exhausted and they may proceed to start something with the union men. The sheriff and his department have been highly cooperative from start to finish but they appear to rather be willing to let a situation arise where the workers, goaded into doing something, will clean up the others.

The strikers are all being given relief; some have moved out of the district to Ft. Huachuca where they have obtained work with contractors, and actually I do not believe there are so many left around Bisbee; but they make up in noise what they lack in numbers, and the men out of work and their wives and children increase the numbers on the picket line. Apparently the bad feeling is not so much between the union men and the non-union as between the union men who went on strike and the membership of the Mine, Mill and Smeltermen's Union who have remained on the job. The bitterness lies there, and it is this membership of the union that is still working that the strikers are trying to get out.

As regards the effect of the strike on the operations, the situation is about as follows: It looks as though we will be a full million pounds short in our production in June from the estimate, i. e., not over 4,000,000 pounds compared with our quota of 5,000,000. Or taking the last three months, namely April, May and June, we will be about half a million pounds short, seeing that we overproduced in April. Also our development and exploration work will show a considerable shortage amounting probably to a thousand feet. This

**Board's Exhibit No. 63.**

is not serious in itself because we can pick it up very easily later on in the year. It is, however, making us a little short of waste filling for our stopes and we will try to increase it just as soon as we can so as not to get the stopes in bad shape. You will, I know, realize that the mere fact that we have had no great total shortage in men since the strike started does not mean that these men have been on the same job as formerly, because of course this has not been the case; we have had to put a lot of special men on watching and miscellaneous jobs around the Junction and Campbell yards connected with protective measures and therefore we have not been able to keep a full complement of men in the stopes and on development work. But to date this hasn't been a serious matter. It will permit us to give a quarter of a million pounds of the Bisbee production this month to United Verde Branch, as we are also down on our smelter production because of more furnace repair trouble than anticipated.

Yours very truly,

Vice-President and  
General Manager.

PGB/d



665

**Board's Exhibit No. 64.**

**COPY**

**JUNE 11, 1935.**

**AIR MAIL**

**MR. LOUIS S. CATES, President,  
PHELPS DODGE CORPORATION,  
40 Wall Street,  
New York, N. Y.**

**DEAR MR. CATES:**

Herewith are three copies of letter from Mr. Henrie, reporting on the causes of the strike at Bisbee and the progress of the strike to date.

Very truly yours,

**P. G. BROCKETT,  
Vice-President and  
General Manager**

By

**JHD-B**

**Encls. 3**

**(Letter from HCH to PGB 6/10/35)**

*Board's Exhibit No. 64.*

COPY

**PHELPS DODGE CORPORATION  
COPPER QUEEN BRANCH, MINES DIVISION  
BISBEE, ARIZONA**

**JUNE 10, 1935**

**MR. P. G. BECKETT,  
Vice President and General Manager,  
PHELPS DODGE CORPORATION,  
Douglas, Arizona.**

**DEAR MR. BECKETT:**

During the period June 3rd to June 6th, inclusive, certain employees at the Cole shaft, who were members of the Mine, Mill and Smelter Workers' Union, started a campaign of intimidation directed against the non-Union employees working at this shaft.

We ascertained that certain Union employees were intimidating the non-Union group in the changeroom, around the shaft and at their various working places underground. Certain of the Union employees became so abusive and threatening that it became a question as to whether the Union group or the Company was going to run this Division.

On the evening of June 5th, the intimidation campaign was carried to a point where the non-Union group were not allowed to change after shift in the changeroom.

On June 6th, a non-Union employee by the name of Eric Wahlgreen was attacked in Bisbee and beaten up by some of the Unionists. As a result, eight employees of the Cole shaft were discharged during the afternoon of June 6th for "intimidation and coercion on the job." The eight men involved were Messrs: William Day, Vivian Crandall, Levi Crandall, J. T. Woods, John H. Lutcavich, Arthur Hall, W. E. Hawkins and Jack Cornet.

*Board's Exhibit No. 64.*

Mr. Dave Pierce, Editor of the Cochise County Labor News, called a special meeting of the Bisbee Miners' Union the evening of June 7th. Approximately ten or twelve men attended this meeting. Mr. Pierce wired officials of the Mine, Mill and Smelter Workers' organization for permission to declare a strike.

Members of the local Union were not given an opportunity to vote on the question as to whether or not they would strike.

The regular meeting of the Union held Saturday evening, June 8th, was attended by sixty members. The membership was divided into two factions—one faction favoring a strike; the other group opposing it.

Mr. Hansen, acting as Chairman of the meeting, announced that he had secured permission from the International Officers to declare a strike and a strike was hereby declared.

Following this announcement, a number of the members of the Local left the hall and refused to participate in further discussion.

Handbills were distributed throughout the district announcing that the Mine, Mill and Smelter Workers' Union had declared a strike against the Phelps Dodge Corporation, Copper Queen Branch, Mines Division, and Lessees of the Company.

The Management of the Company was not advised by the Union that a strike was to be declared, nor has the Management been advised relative to the demands or grievances of the Union.

On June 10th, picket lines were established at the gates leading to the Campbell and Junction shafts, and also in the vicinity of the Cole shaft.

Approximately sixty employees failed to report for work on day shift this morning.

A large number of unemployed are present in the picket lines.



*Board's Exhibit No. 64.*

Public sympathy throughout the District is against the strike action.

At the present time, the strike plan of the Union appears to be a complete flop, and it is doubtful if the Union can secure enough support to continue the strike beyond a few days.

Yours very truly,

(Signed) H. C. HENRIE

HCH:P

**Board's Exhibit No. 65.**

**COPIES OF WESTERN UNION TELEGRAMS**

**DOUGLAS ARIZONA AUGUST 25, 1935**

**L S CATES PRESIDENT  
PHELPS DODGE CORPORATION  
40 WALL STREET  
NEW YORK N Y**

**BISBEE MINERS UNION VOTED LAST NIGHT TO  
CALL OFF STRIKE VOTE CARRIED FORTY TO TEN  
P. G. BECKETT**

**(CHG PHELPS DODGE CORPORATION  
OFFICE OF GENERAL MANAGER)**

**DOUGLAS ARIZONA AUGUST 25 1935**

**P G BECKETT  
NEPTUNE BEACH APARTMENTS  
6663 NEPTUNE PLACE  
LA JOLLA CALIFORNIA**

**BISBEE MINERS UNION VOTED LAST NIGHT TO  
CALL OFF STRIKE VOTE CARRIED FORTY TO TEN  
AM ADVISING CATES TELEGRAM TEN**

**J. H. DAVIS**

**(CHG PHELPS DODGE CORPORATION  
(OFFICE OF GENERAL MANAGER)**

**Board's Exhibit No. 66.****COPY**

**PHELPS DODGE CORPORATION  
COPPER QUEEN BRANCH, MINES DIVISION  
BISBEE, ARIZONA**

**JUNE 5, 1937**

**MR. H. M. LAVENDER, General Manager  
PHELPS DODGE CORPORATION  
Douglas, Arizona**

**DEAR MR. LAVENDER:**

Enclosed herewith you will find two copies of a letter which I have just received from Dr. Nylander. Also attached is a copy of a letter which I have just sent to Mr. Kitchel.

As yet, I do not know the details of the various charges which have been made. You, of course, are acquainted with the men mentioned whom we are charged of having discriminated against regarding employment. It is possible that all of the charges center around activities of several years ago and I do not believe any one of the charges is warranted or true.

Mr. Kitchel is tied up on an important Jerome matter next Tuesday. Unless we decide to the contrary, I shall acknowledge Nylander's letter Monday, stating that it has just been received, and we will answer his communication officially in the near future.

In order to ascertain, if possible, just what is embodied in the various charges, I shall probably have to talk with Nylander and some other people in Los Angeles, and shall probably leave here Tuesday afternoon. If it seems advisable, after discussing the matter with Kitchel, I may take him with me.



**Board's Exhibit No. 66.**

I believe it would be desirable to keep Nylander's letter rather confidential until we have had an opportunity of ascertaining just what evidence Nylander has. I would assume from this communication that Mr. Shupper has found it rather difficult to make such progress in the District and he is now attempting to secure assistance from the Labor Board; all of which means we shall probably have to defend ourselves against some trumped up testimony and charges. However, until we know more about the whole matter, there is not much that we can do or say.

Yours very truly,

(Signed) H. C. HENRIE.

HCH:P

Encls.

**Board's Exhibit No. 67.****COPY****JUNE 15, 1937.**

**MR. L. S. CATES, President,  
PHELPS DODGE CORPORATION,  
40 Wall Street,  
New York, N. Y.**

**DEAR MR. CATES:**

Enclosed herewith please find a copy of a letter from Mr. Henrie relative to his visit in Los Angeles where he contacted Dr. Nylander, Director of the Regional Labor Board.

Henrie's letter is self-explanatory and probably hits the nail on the head when he thinks that Nylander bears considerable malice towards the Company as result of the 1935 strike trouble and settlement. We are convinced that the Labor Board has no justification for the charges made, but at the same time we do anticipate that they will go as far as possible on these and any other trumped up charges that can be found.

Very truly yours,

General Manager

**HML-B**

**Encl.**

**(cc HCH's letter 6/11/37)**

*Board's Exhibit No. 67.*

COPY

**PHELPS DODGE CORPORATION**  
**COPPER QUEEN BRANCH, MINES DIVISION**  
**BISBEE, ARIZONA**

JUNE 11, 1937

**MR. H. M. LAVENDER, General Manager**  
**PHELPS DODGE CORPORATION**  
**Douglas, Arizona**

**DEAR MR. LAVENDER:**

I contacted Dr. Nylander, Director of the Regional Labor Board, at his office June 9, and discussed with him the charges which were filed by the International Union of Mine, Mill and Smelter Workers, Local No. 30, against the Mines Division.

We denied the truth of all the charges listed in the complaint. My guess is that most of the information covers the period prior to the strike in 1935.

Nylander was advised that when the Wagner Act was passed in 1935, the employees of the Company were advised that the Company intended to comply with the law in all respects. In regard to the charge that the Company has discriminated in regard to hiring employees by refusing employment to certain individuals, the records of some of these men were discussed and he admitted that apparently they are weak cases.

Nylander did not know that the old Representation Plan had been abandoned and that a new labor organization was formed by the employees. This information changed some of his ideas regarding our set-up.

Nylander finally stated that since these charges had been filed, he would have to investigate them, however, instead of holding a hearing on the matter at this time, he would



*Board's Exhibit No. 67.*

send an investigator by the name of Pursinger, who is a young lawyer attached to his office, to Bisbee, June 27, to investigate the entire matter.

Following Mr. Pursinger's report, it would be left to the National Labor Relations Board to decide whether a hearing should be held or not.

Pursinger, who was present during the interview, stated that two or three days would be required to make the investigation and his report would not be available for fifteen or twenty days after that date. Since the Labor Board docket is crowded, it is doubtful if a hearing could be held prior to September 1.

I think our visit convinced Nylander that the Union does not have much of a case. From other sources I ascertained that Nylander is dissatisfied with the outcome of the 1935 matter and would like, if possible, to even up matters with the Company.

Nylander asked me if the Company would employ the men mentioned in the discrimination charge. I advised him that the Company would not. It was agreed that we would write him fully on these cases.

Yours very truly,

(Signed) H. C. HENRIE

HCH:P

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
TWENTY-FIRST REGION

IN THE MATTER OF  
PHELPS DODGE CORPORATION, a corpo-  
ration;

and

INTERNATIONAL UNION OF MINE, MILL,  
AND SMELTER WORKERS, LOCAL No. 30.

CASE No.

XXI-C-266

**Supplemental Stipulation.**

As a supplement to the stipulation heretofore entered into for the purpose of the hearing in the above entitled case, the following facts are hereby stipulated and agreed to by and between the attorney for the National Labor Relations Board and the attorneys for respondent, Phelps Dodge Corporation:

(1) During the years 1936, and 1937 respondent purchased from El Paso Natural Gas Company the following amounts of natural gas which were transported by pipeline from the State of New Mexico to the State of Arizona and used by respondent in its mining and smelting operations within the State of Arizona, as follows:

	1936	Cubic Feet
Destination		
New Cornelia Branch .....		66,422,000
Copper Queen Branch, Mines Division .....		593,347,000
Copper Queen Branch, Smelter Division .....		3,493,281,000

*Supplemental Stipulation.**1937*

<i>Destination</i>	<i>Cubic Feet</i>
New Cornelia Branch .....	1,955,093,000
Copper Queen Branch, Mines Division .....	698,959,000
Copper Queen Branch, Smelter Division .....	4,477,263,000

(2) During the years 1936 and 1937 respondent purchased from Gallup American Coal Company 121,102 and 141,284 tons of coal, respectively, which were shipped from the State of New Mexico to the State of Arizona and used by respondent at its United Verde Branch, Smelter Division, at Clarkdale, Arizona.

(3) During the years 1936 and 1937 respondent purchased from various sources the following amounts of fuel oil which were shipped from various States other than the State of Arizona into the State of Arizona and used by respondent in its mining and smelting operations within the State of Arizona, as follows:

*1936*

<i>Destination</i>	<i>Barrels</i>
New Cornelia Branch .....	394,575
Copper Queen Branch, Mines Division	22,841
United Verde Branch, Smelter Division	26,722
Morenci Branch, Mines Division .....	4,382

*1937*

New Cornelia Branch .....	177,608
Copper Queen Branch, Mines Division	37,177
United Verde Branch, Smelter Division	53,064
Morenci Branch, Mines Division .....	35,534
Morenci Branch, Smelter Division .....	34,323

(4) During the years 1935 and 1936 Nichols Copper Company sold very substantial quantities of refined copper



*Supplemental Stipulation.*

to purchasers other than Phelps Dodge Copper Products Corporation.

It is further stipulated and agreed to that the inclusion of the foregoing facts as evidence in the above entitled case is objected to by respondent on the grounds that the same are irrelevant, incompetent and immaterial in that they fail to constitute evidence on the issue of whether or not the unfair labor practices, in which respondent is alleged in the complaint to have engaged, are such as to be deemed to be "affecting commerce" as that term is defined in Section 2 (7) of the National Labor Relations Act, or on the issue of whether or not the mining operations at respondent's Copper Queen Branch, Mines Division, constitute interstate commerce.

It is further stipulated and agreed to that if the Trial Examiner who presided at the hearing in the above entitled case should overrule the foregoing objections and admit the facts contained herein in evidence respondent shall be allowed an exception to such ruling, otherwise this stipulation to be of no force or effect whatsoever.

Dated this 16th day of February, 1938.

NATIONAL LABOR RELATIONS BOARD,

By DAVID PERSINGER

Attorney

PHELPS DODGE CORPORATION, respondent,

By ELLINWOOD & ROSS

WILLIAM A. EVANS

DENISON KITCHEL

Attorneys

BEFORE THE NATIONAL LABOR RELATIONS BOARD  
TWENTY-FIRST REGION

IN THE MATTER OF  
PHELPS DODGE CORPORATION, a corpo-  
ration,

and

INTERNATIONAL UNION OF MINE, MILL  
AND SMELTER WORKERS, LOCAL No. 30.

CASE No.  
XXI-C-266

**Respondent's Motions to Dismiss and Supporting  
Memorandum.**

At the close of the Board's case and again at the conclusion of the taking of testimony in the above-entitled matter, respondent made several motions to dismiss, all of which were directed to the evidence in the record. These motions were severally denied and it is the purpose of respondent to renew those motions, to make additional motions, and to state respondent's position with respect to each of them.

**I.**

**CASES INVOLVING CLEAR FAILURE OF PROOF.**

Respondent moves to dismiss as to the following individuals: William Dougherty, Clyde Bigelow, Milton Wynn, and Richard Johnson. It is the position of respondent that the Board has clearly failed to establish a case with respect to these persons, and that there is insufficient evidence in the record upon which a finding of discrimination could be predicated. On the contrary, the evidence is clear and convincing to the effect that these men were not members of the union either at the time of the alleged discrimination or

*Respondent's Motions to Dismiss and Supporting  
Memorandum.*

at the time of the walk-out on June 10, 1935; that they were not in the picket line at any time; and that respondent had no reason to believe that they were members of the union at any time. In addition to the foregoing facts, with respect to William Dougherty the evidence to the effect that he has not worked for respondent at any time since October 25, 1934, and hence did not walk-out on June 10, 1935, is uncontradicted, and with respect to Richard Johnson the undisputed facts are that Johnson has never been employed by respondent; that he did not become a member of the union until after he went to work for the Shattuck-Denn Mining Company in April, 1936; and that he has never made application for employment with respondent since that time.

II.

CASES INVOLVING UNEMPLOYABLES.

Respondent moves to dismiss as to the following individuals: Clyde Bigelow, Henry Waters, H. D. Edge and J. M. Morris. It is the position of respondent that, as shown by their own testimony, these persons are suffering from an affliction of the lungs, commonly known as silicosis, and are unemployable. The testimony of M. A. Bateman to the effect that all persons must undergo a physical examination prior to obtaining employment with respondent and that respondent rejects all applicants whose lungs are found to be defective is uncontradicted.

Respondent takes this same position with respect to William Dougherty. Dougherty has not been employed by respondent at any time since October 25 1934. He made his first and only application for reemployment on or about January 15, 1937. The testimony is clear and convincing to the effect that Dougherty was rejected for employment because of his physical condition.



*Respondent's Motions to Dismiss and Supporting Memorandum.*

III.

H. J. MONTGOMERY.

Respondent moves to dismiss as to H. J. Montgomery upon the ground that the evidence is clear and convincing to the effect that the alleged failure or refusal to "reinstate" Montgomery was based upon and was fully justified by his unsatisfactory service record.

IV.

CASES INVOLVING PERSONS NOT EMPLOYED ON JUNE 10, 1935.

Respondent moves to dismiss as to the following individuals: William Dougherty, William Guess, William Day, Levi Crandall, John P. Foley, Vernon Curtis, Grover Cornett, and Richard Johnson. From their own testimony, it has been established that none of these persons was an employee of respondent on, immediately prior to, or at any time subsequent to June 10, 1935. It follows, therefore, that they are not employees of respondent under the definition of the term "employee" contained in Section 2 (3) of the National Labor Relations Act, which became effective on July 5, 1935. With respect to Day and Crandall, testimony was elicited by the Board apparently for the purpose of establishing that the discharges of these two men constituted an unfair labor practice upon the part of respondent and of thereby bringing them within the definition referred to above. On that point it is sufficient to state that these two men were discharged on June 6, 1935.

It is clear that these men have not been and are not now employees of respondent as the term "employee" is defined in the Act. It will be readily noted that sections 7 and 8 of the Act are confined exclusively to "employees". The rights guaranteed in Section 7 are guaranteed to "employees" only. Under Section 8 (1) it is made an unfair

*Respondent's Motions to Dismiss and Supporting Memorandum.*

labor practice "to interfere with, restrain, or coerce employees" in the exercise of those rights. Obviously, no such unfair labor practice could have been committed by respondent with respect to the eight men now under discussion. The labor practice defined in Section 8 (3) of the Act becomes unfair only when it operates to abridge the rights guaranteed to "employees" in Section 7 and clearly there could have been no such unfair labor practice committed by respondent with respect to these eight men. Moreover, it should be noted that there is no evidence in the record to show that the rights of any persons who actually were "employees" of respondent have been in any way abridged by the alleged refusal to "reinstate" these eight individuals whose status as non-employees cannot be disputed.

Section 10 of the Act sets forth the powers of the Board with respect to the prevention of unfair labor practices, and sub-section (c) of Section 10 authorizes the issuance of orders requiring a respondent "to take such affirmative action, including *reinstatement* of employees with or without back pay, as will effectuate the policies of this Act". To construe this section as authorizing the Board to order affirmative action such as the giving of employment with or without back pay to persons other than those who are "employees" at the time such order is entered, would render the same unconstitutional and void. Such action would require the making of contracts with persons who, as far as any employment relationship is concerned, would be total strangers to the respondent and would abridge the liberty of contract guaranteed to respondent by the Fifth Amendment to the Constitution of the United States. An order requiring the payment of back pay to such persons, whether or not employment was also required, would deny to respondent its right to a trial by jury under the Seventh Amendment to the Constitution of the United States, and would also operate to deprive respondent of its property without due process of law in contravention of the Fifth Amendment.

*Respondent's Motions to Dismiss and Supporting  
Memorandum.*

Respondent further takes the position that under the express wording of Section 10 (c) of the Act, the Board's authority to order the payment of back pay is limited to cases where "reinstatement" is also ordered.

V.

**CASES INVOLVING PERSONS WHO HAVE OBTAINED REGULAR AND  
SUBSTANTIALLY EQUIVALENT EMPLOYMENT.**

Respondent moves to dismiss as to the following individuals: William Day, Levi Crandall, E. L. Hargus, John Henry Key, George Frazee, John P. Foley, Edward Bowden, Paul Amaro, Wilfred D. Mortenson, Anson Perry Windsor, Grover Windsor, Vernon L. Curtis, Grover Cornett, Martin Vaclav, Monte Reed, Alexander Kalastro, W. H. Bigelow, William H. Windsor, Ellis M. Scales, F. H. Erkkila, Luke Sertich, Merrell Ernest Johnson, William D. Graham, Jesse Edge, Richard Johnson, William E. Sharp, Jr., H. D. Edge, Milton Wynn, P. C. Lytle, Lester F. Bethel, Leonard Guess, Ben H. Stringer, Tom Abedin, Pete D. Carretto, Mike Mihelich, J. M. Morris, Clyde E. Bigelow, and Joe Henry Dunkerson. It is the position of respondent that all of these persons, as shown by their own testimony and the testimony of others, have received regular and substantially equivalent employment and that, even assuming that on, and for sometime after July 5, 1935, they were "employees" of respondent, they have since lost that status. It follows, therefore, that as to those men there can be no unfair labor practice at the present time. It is respondent's contention that any order requiring "reinstatement" of or the payment of back pay to any of these individuals would be beyond the authority granted to the Board under the terms and provisions of the Act and would deny to respondent the rights guaranteed to it by the Fifth and Seventh Amendments to the Constitution of the United States. The reasons set forth in paragraph IV hereof are equally applicable to this contention.



*Respondent's Motions to Dismiss and Supporting Memorandum.*

VI.

STATUS AS EMPLOYEES ON JULY 5, 1935.

Respondent moves to dismiss the complaint in its entirety on the ground that none of the persons listed in Appendix A thereto was, on July 5, 1935, or has been at any time since that date, an "employee" of respondent as defined in Section 2 (3) of the Act. Of the 45 persons involved, the evidence shows that 37 voluntarily left the employ of respondent on June 10, 1935, and the remaining eight were not in the employ of respondent on or immediately prior to that date. It is the position of respondent that this action upon the part of these 37 persons and a few others constituted neither a labor dispute nor a strike. The evidence shows that no strike vote was taken in accordance with the provisions of the Constitution and By-Laws of the International Union of Mine, Mill and Smelter Workers, with which Bisbee Miners Union, Local No. 30, was affiliated. The evidence shows that no notice of an intention to call a strike was ever given to respondent by the union or any of its members. The evidence shows that no demands were made by the union on respondent, the refusal of which could be construed as constituting the basis of a labor dispute between respondent and members of the union. The evidence shows that those voluntarily leaving the employ of respondent on June 10, 1935, constituted less than 10% of the persons employed by respondent on that date. The evidence shows that prior to July 5, 1935, the places of all of those who left on June 10, 1935, had been filled and that respondent's operations were normal. In view of this testimony and upon the basis of the law as it existed prior to the effective date of the National Labor Relations Act, respondent contends that the 37 individuals referred to above had by July 5, 1935, ceased to be employees of respondent in any sense of the word. For the same reasons, respondent contends that there was no labor dispute "current" on July

*Respondent's Motions to Dismiss and Supporting  
Memorandum.*

5, 1935. It follows that respondent could not have engaged in an unfair labor practice with respect to any of these 37 persons. It is respondent's contention that any order requiring "reinstatement" of or the payment of back pay to any of these individuals would be beyond the authority granted to the Board under the terms and provisions of the Act and would deny to respondent the rights guaranteed to it by the Fifth and Seventh Amendments to the Constitution of the United States. The reasons set forth in paragraph IV hereof are equally applicable to this contention.

In addition, respondent contends that any construction of the provisions of the National Labor Relations Act whereby the same would be given a retroactive effect, would, as applied to the evidence in this case, constitute a denial of the due process of law guaranteed to respondent by the Fifth Amendment.

## VII.

### AN UNFAIR LABOR PRACTICE AFFECTING COMMERCE.

Respondent moves to dismiss the complaint in its entirety on the ground that the evidence fails to establish any unfair labor practice affecting commerce. Section 10 of the Act empowers the Board "to prevent any person from engaging in any unfair labor practice affecting commerce". As defined in Section 2 (7) "the term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce". There is no testimony to establish or from which it could be inferred that the alleged unfair labor practice was or is "in commerce, or burdening or obstructing commerce or the free flow of commerce". The Board, therefore, must rely upon the proposition that the alleged unfair labor practice is such that it may be considered as "having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of com-

*Respondent's Motions to Dismiss and Supporting  
Memorandum.*

merce". It must be remembered that the alleged unfair labor practice is the failure or refusal on the part of respondent to "reinstate" the persons whose names are listed in Appendix A of the complaint. Respondent submits that there is no evidence upon which there could be based a conclusion that the alleged failure or refusal to "reinstate" these persons has led or tends to lead to any labor dispute. On the contrary, there is an abundance of testimony in the record to the effect that such failure or refusal has neither led or tended to lead to such a result, but that, instead, reinstatement of these men would in fact lead or tend to lead to a dispute with the employees of respondent. In other words, respondent is charged with failure to do an act, the doing of which would bring about the very result for the prevention of which the National Labor Relations Act was enacted and the National Labor Relations Board was created. The Board has failed to establish a case in which the powers given to it in Section 10 of the Act could be brought into play. Those powers are limited to the prevention of unfair labor practice "affecting commerce" and any attempt to exercise them other than in strict conformity with that requirement would be a violation of the Tenth Amendment to the Constitution of the United States.

VIII.

FEDERAL REGULATION.

Respondent moves to dismiss the complaint in its entirety upon the ground that the mining operations of respondent's Copper Queen Branch, Mines Division, are not subject to federal regulation. It is the position of respondent that these mining operations are entirely antecedent to commerce and do not come within the regulatory powers conferred on the Congress of the United States by Article I, Section 8 of the Constitution of the United States. Any attempt upon the part of Congress to regulate



***Respondent's Motions to Dismiss and Supporting  
Memorandum.***

these activities of respondent, which are clearly intrastate in character, would constitute a violation of the provisions of the Tenth Amendment to the Constitution of the United States.

**IX.**

**UNFAIR LABOR PRACTICES.**

Respondent moves to dismiss the complaint in its entirety on the ground that the Board has failed to prove that respondent has ever, or is now, engaged in an unfair labor practice as defined in sub-divisions (1) and (3) of Section 8 of the National Labor Relations Act. There is no evidence in the record to establish that respondent's alleged failure or refusal to "reinstatement" the persons listed in Appendix A of the complaint has at any time operated to interfere with, restrain or coerce respondent's employees in the exercise of the rights guaranteed to them in Section 7 of the Act. (Section 8 (1)). There is no evidence in the record to establish that by such alleged failure or refusal respondent has discriminated against any of its employees "in regard to hire or tenure of employment, or any term or conditions of employment" (Section 8 (3)), and even assuming that there is evidence of such discrimination, there is no evidence in the record to establish that the same was for the purpose of, or did, in fact, operate to "encourage or discourage membership in any labor organization". (Section 8 (3)). The Board having clearly failed to establish these facts which are essential to a finding of an unfair labor practice, respondent respectfully submits that the case should be dismissed.

Respectfully submitted,

ELLINWOOD & ROSS,  
WILLIAM A. EVANS,  
DENISON KITCHEL,  
Attorneys for Respondent.

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**  
**TWENTY-FIRST REGION.**

**IN THE MATTER OF**  
**PHELPS DODGE CORPORATION, a corpo-**  
**ration,**  
**Respondent,**  
**and**

**CASE No.**  
**XXI-C-266**

**INTERNATIONAL UNION OF MINE, MILL**  
**& SMELTER WORKERS, LOCAL No. 30.**

**DAVID PERSINGER, Esq., Los Angeles, California,**  
**for the Board;**

**MESSRS. ELLINWOOD & ROSS by DENISON KITCHEL and**  
**WILLIAM A. EVANS, of Phoenix, Arizona,**  
**for the Respondent.**

**Intermediate Report.**

Upon charge duly made and acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, 49 Stat. 449, Towne Nylander, Regional Director, Twenty-first Region, as agent of the National Labor Relations Board, acting pursuant to its Rules and Regulations—Series 1, as amended, Article IV, Section 1, issued its Complaint dated January 10, 1938, against Phelps Dodge Corporation, a corporation, Respondent herein.

The Complaint and Notice of Hearing thereon were duly served the Respondent on January 10, 1938, in accordance with said Rules and Regulations—Series 1, as amended, Article V, Section 1.

The Complaint was amended at the time of the hearing.

*Intermediate Report.***THE COMPLAINT.**

The Complaint, as amended, alleged Respondent to be a New York corporation with principal place of business in New York, New York; that it operates mines at or near Bisbee, Arizona, for the production of various minerals, including copper ore. This mine is known as the Copper Queen Mine. The Respondent also is alleged to operate smelters near Douglas, Arizona, and to conduct mining operations in Arizona, New Mexico, Mexico, and smelting operations in New Mexico and Texas. It is alleged that Respondent transports ore and other minerals from its mines and smelters in interstate commerce to states other than the State or Country of origin of the shipment. Respondent's activities in refining its raw materials, manufacturing them into finished products in New York, New Jersey, Connecticut, Indiana and elsewhere and selling said finished products in interstate commerce are described. The interstate activities of Respondent in operating wholesale and retail mercantile establishments is set forth. These activities of Respondent are carried on by itself or its subsidiaries.

The International Union of Mine, Mill & Smelter Workers, Local No. 30, hereinafter referred to as the Union, is alleged to be a labor organization within the definition of the Act.

Respondent is alleged to have refused to reinstate certain specified individuals employed at the Copper Queen Mine because of their activity in behalf of the Union and said refusal to reinstate is alleged to violate Sections 8 (1), (3), and Section 2, (6) and (7) of the Act.

**THE ANSWER.**

Thereafter, Respondent filed its Answer admitting the interstate character of its operations and the Union to be a labor organization; but denying that the employees named in the Complaint were discharged in violation of the Act.



*Intermediate Report.***HEARING.**

Pursuant to Notice of Hearing the undersigned as Trial Examiner of the National Labor Relations Board designated to conduct hearings in this case, conducted a hearing on January 27, 29, 31, February 1, 2 and 3, 1938, at Bisbee, Arizona.

Full opportunity to be heard, to cross-examine witnesses and produce evidence bearing upon the issues was afforded to the parties. Oral arguments were not made by any party. After the close of the hearing, Respondent filed a written Motion to Dismiss and supporting Memorandum with the Trial Examiner.

**MOTIONS.**

The Board's attorney moved to dismiss the Complaint as to Bert Bethel, T. N. Curtis and McKelvey. This motion was granted.

The Board's attorney moved to conform pleadings to proof in correcting the spelling of names of persons mentioned in the Complaint. This motion was granted. Names are spelled in this Report as set forth in the transcript.

By stipulation of all counsel, the Complaint was amended to include the name of Earl Worden. At the close of taking of testimony, on motion of Respondent, consented to by the Board's attorney, the Complaint as amended as to Earl Worden was dismissed.

At the time of hearing, Respondent's counsel moved to dismiss the Complaint on several grounds. This motion was denied.

On stipulation of all counsel, the Answer, Page 8, Line 2, was amended to change the figure "32" to "31", and the figure "33" to "32".

The written motion of Respondent to dismiss the Complaint, filed with the Trial Examiner after the close of the hearing, has been considered. For reasons set forth herein-

*Intermediate Report.*

after, the Complaint should be dismissed as to William Daugherty, Vernon Dell Curtis, Grover Cornett, Richard Johnson and Leonard Guess. Said written motion should otherwise be denied.

Upon the record as thus made, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence received at the hearing, the undersigned, makes, in addition to the above, the following specific findings of fact:

**FINDINGS OF FACT.****I. THE PARTIES.****1. *The Respondent, Phelps Dodge Corporation, a corporation.***

The Respondent is a New York corporation with principal place of business at New York, New York. At all times referred to herein, it operated a mine at Bisbee, Arizona, known as the Copper Queen Mine, for the principal purpose of mining copper ore. Many other minerals are mined on this property.

Respondent's activities are very extensive, including mine operations at other places in the States of Arizona and New Mexico; smelting at Douglas, Arizona, and other places; and shipping the products of its mines and smelters from one point to another in the United States.

Respondent directly or through its subsidiaries manufactures many finished products from the products of its mines and smelters; said finished products being sold by it. Respondent, through a subsidiary, operates mercantile establishments selling various articles of merchandise at both wholesale and retail at Bisbee and Douglas, Arizona, and elsewhere.

The labor dispute referred to herein occurred at Respondent's Copper Queen Mine, Bisbee, Arizona. This mine

*Intermediate Report.*

has three principal shafts known as the Junction, Cole and Campbell. These shafts are more than 2,500 feet deep. They are connected underground by tunnels at many levels. The mining operations are conducted from these tunnels. The Junction Shaft opens at the surface near Respondent's employment office. The picket line referred to herein was near the surface opening or collar of the Junction Shaft.

2. *The Union, International Union of Mine, Mill & Smelter Workers, Local No. 30.*

The Union was chartered in September, 1933. From June 3, 1935, to August 26, 1935, Respondent had the activities of the Union under surveillance to the extent that Respondent's Assistant General Superintendent of the Copper Queen Mine was able to report to his superior what transpired at the meetings of the Union during that period; (Board's Exhibit Nos. 61, 64).

Respondent discharged certain Union members on June 6, 1935, for their union activity. Because of these discharges, the Union held a meeting on June 7, 1935, at Bisbee, at which time members present voted to strike against the Respondent.

Pursuant to this strike vote, a large majority of the Union members employed by the Respondent at the Copper Queen Mine struck on June 10, 1935. This strike continued until August 24, 1935. Throughout the strike, the Union maintained a picket line in front of the gate to the Junction Shaft.

The Union has among its members, employees of the Shattuck Den Mining Company, Bisbee, Arizona.

The Union is a labor organization within the definition of the Act.



*Intermediate Report.***II. REFUSAL TO REINSTATE EMPLOYEES FOR UNION ACTIVITY.**

Respondent's employees named hereinafter were on strike on July 5, 1935 and continued on strike until August 24, 1935. This strike was the result of Respondent's discharging certain Union members. All of the employees named were members of the Union at all times referred to unless otherwise noted.

In each instance, the employee individually, or through a Committee representing the Union, requested reinstatement from the Respondent after July 5, 1935 particularly on August 9 and 23, 1935, and in each instance this request for reinstatement was refused by Respondent. The reason for this refusal to reinstate was the same in every case, to-wit: That the employee had participated in the strike and had been an active member of the picket line maintained by the Union outside the gate to Respondent's property.

Respondent's determined policy to refuse employment to these men because of their union activity in connection with the strike is reflected in its interoffice correspondence, copies of which appear in the exhibits; (see Board's Exhibits Nos. 59, 60, 61 and 67).

Respondent's employment agent at the time of the strike (who continued in that capacity for several months thereafter) admitted that he had been instructed by his superiors to "go slow" about reinstating the strikers. These instructions were translated by him to mean that he was *not* to reinstate these men. None of them were successful in their efforts in this direction. After Respondent's refusal to reinstate them, several of the employees hereinafter named entered the employ of the Shattuck Den Mining Company at Bisbee, Arizona.

Shattuck Den Mining Company is a comparatively small concern. Until a few months before the trial in this matter, the ventilating system used in this mine was inferior to that used by the Respondent. The air supplied to miners underground was not considered up to the standard required by

*Intermediate Report.*

the State Agency charged with the regulation of working conditions in the mines. Although several of the employees here under consideration received compensation from the Shattuck Den Mining Company equivalent to or greater than that received by them from Respondent, they all expressed the desire to return to Respondent's employ. Employment by the Respondent is preferable to that by the Shattuck Den Mining Company for the reason that Respondent is a larger, better established organization and can secure to its employees greater regularity and continuity of employment.

By returning to the Respondent, these employees would retain seniority rights which they do not have at the Shattuck Den Mining Company.

It is therefore found that the employees hereinafter named who have been employed by the Shattuck Den Mining Company have not received other regular and substantially equivalent employment to that held by them at the time of Respondent's refusal to reinstate them.

1. *W. M. Day* entered the employ of Calumet & Arizona Mining Company in 1929 and in 1931 when that Company merged with Respondent, was transferred to the Respondent. Day was an early member of the Union, joining in 1934. In June, 1935, he was employed by Respondent as a mucker. He was one of the group of Union members discharged by the Respondent June 6, 1935. His work with the Respondent ceased as a consequence of and in connection with a current labor dispute. During the strike he served upon a Committee of Union members that visited Respondent August 23, 1935 seeking reinstatement of strikers. The efforts of this Committee as well as all other efforts of the Union, or its members, seeking reinstatement were unsuccessful.

Day entered the employment of Shattuck Den Mining Company on August 14, 1936, as an electrician's helper. He was so employed at the time of the hearing.

*Intermediate Report.*

2. *Levi Crandal* entered Respondent's employ February 2, 1927. He was employed by Respondent as a mucking machine operator until January 6, 1935, when, because of his membership in the Union, he was discharged. His discharge and those of other Union members resulted in the strike herein reported. His work with the Respondent ceased as a consequence of and in connection with a current labor dispute. During the strike he served upon a Committee of Union members that visited Respondent's office seeking reinstatement of strikers. The efforts of this Committee, as well as all other efforts of the Union or its members seeking reinstatement were unsuccessful.

Crandal entered the employ of the Shattuck Den Mining Company June 7, 1937, as a miner and was employed in that capacity at the time of the hearing.

He was casually employed elsewhere between July 5, 1935 and June 7, 1937, but not in regular and substantially equivalent employment to that held by him before his discharge by the Respondent on June 6, 1935.

3. *Edgar Lewis Hargus* entered Respondent's employ in 1924. He was working for Respondent immediately before June 10, 1935, when he went on strike. He continued active in the strike and picketing operations for the Union until the latter part of July, 1935. After this time, he was casually employed elsewhere but not in regular and substantially equivalent employment to that held by him with the Respondent before the strike. He was at the time of the hearing employed by the Shattuck Den Mining Company but expressed his desire to return to the Respondent.

4. *John Henry Key* entered Respondent's employment in 1928. He was a raise man and stope man for Respondent when he went out on strike as a member of the Union on June 10, 1935.



*Intermediate Report.*

He was casually employed elsewhere though not in regular and substantially equivalent employment to that held by him with Respondent before the strike.

In August, 1937, he entered the employ of the Shattuck Den Mining Company and was there employed at the time of the hearing.

5. *George Frazee* entered Respondent's employ in March, 1934. He was employed as a miner for the Respondent on June 10, 1935, when as a member of the Union he went out on strike. He continued on strike and picket duty for the Union after July 5, 1935.

On February 15, 1937, Frazee entered the employment of the Shattuck Den Mining Company and was so employed at the time of the hearing. Before his employment by Shattuck Den Mining Company he had other casual but not substantially equivalent employment to that held by him with Respondent at the time of the strike.

6. *John Patrick Foley* entered the employ of the Calumet & Arizona Mining Company in 1926. He was transferred to the Respondent at the time of the merger of the Calumet & Arizona Mining Company with the Respondent in 1931. He voluntarily left the employment of the Respondent in January, 1935.

On June 1, 1935, he applied to the Respondent for work and on or about June 4, 1935, he was refused employment by the Respondent. He was then a member of the Union and after the strike was called he participated in the picket line. After the strike he was employed by the Shattuck Den Mining Company.

This man was not an employee of the Respondent at the time of the commencement of the strike nor on July 5, 1935, nor at any time thereafter. The allegations of the Complaint as to him should be dismissed.

7. *Edward Bowden* entered Respondent's employ in 1920. His employment was not continuous until 1927 but

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from that date until June 10, 1935, he was continuously employed by Respondent as a miner. He was a striker engaged in picketing Respondent's property in behalf of the Union before and after July 6, 1935. He entered the employment of the Shattuck Den Mining Company as a timberman in March, 1937, and was so employed at the time of the hearing.

Between August 25, 1935, and March, 1937, he was casually employed elsewhere but not in regular and substantially equivalent employment to that held by him with Respondent at the time of the strike.

8. *Paul Amaro* entered Respondent's employment in March, 1934, as a miner and remained in that capacity with Respondent thereafter until he went on strike July 10, 1935. As a member of the Union, he was active in the picket line throughout the entire strike.

In June, 1936, he entered the employment of Shattuck Den Mining Company as a miner and was employed by said Company at the time of the hearing. Between the termination of the strike and June, 1936, he had other casual employment but not substantially equivalent to that held by him at the time of the strike.

9. *Wilford Davis Mortenson* entered Respondent's employment in July, 1929, and after seven or eight months left Respondent. He returned to Respondent April 1, 1934, and continued with the Respondent until the time of the strike. He was employed by the Respondent as a miner June 10, 1935, when he went on strike and thereafter and until August, 1935, was active as a picket in behalf of the Union.

In August, 1936, he entered the employment of the Shattuck Den Mining Company as a miner and was there employed at the time of the hearing.

During the period August, 1935, to August, 1936, he had casual employment elsewhere but not substantially equivalent to that held by him with Respondent.

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10. *Anson Perry Windsor* entered Respondent's employment June, 1934, as a mucker. He was on the sick list receiving insurance payments by reason of employment with the Respondent on June 10, 1935, when, as a member of the Union, he went on strike. About July 15, 1935, he was sufficiently recovered to resume his customary work with the Respondent. He served on the picket line after July 5, 1935, until approximately the termination of the strike.

On November 23, 1936, he was employed by Shattuck Den Mining Company as a miner and continued in such capacity to the time of the hearing. Between the termination of the strike and November 23, 1936, he had other casual employment but not substantially equivalent to that held with Respondent.

11. *Emery Adelbert Curtis* entered the employment of the Calumet & Arizona Mining Company in 1925. At the time of the merger in 1931, he was transferred to Respondent's pay roll and was employed by Respondent as a powder man at the time of the strike.

On June 10, 1935, he went on strike as a member of the Union and served on the picket line thereafter until about August 13, 1935.

Since the termination of the strike he has had other casual employment but not substantially equivalent to that had with Respondent.

12. *William Daugherty* entered Respondent's employment in 1931. He worked for Respondent at different times thereafter but was not employed by Respondent after 1934. At the time of the strike he was not a member of the Union in good standing. He did not participate in the strike or in the picket line.

In January, 1937, he applied to the Respondent for employment but was then refused employment. Daugherty testified that at the time of this refusal to employ him, Respondent's employment agent gave him as a reason for this



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action by Respondent that Daugherty had called some other employees "scabs". Respondent contended that Daugherty was refused employment because of his physical condition. No act of discrimination is established against Respondent by its refusal to employ this man. The Complaint as to him should be dismissed.

13. *Tom Abedin* entered the employ of the Calumet & Arizona Mining Company in 1918. He worked for that corporation until 1923. He later returned to the Calumet & Arizona Mining Company and was transferred to Respondent's pay roll at the time of the merger in 1931. He was laid off on two occasions after 1931 but was continuously employed by Respondent from February 12, 1934, to the date of the strike. He struck as a member of the Union June 10, 1935, and was active on the picket line for the Union thereafter until August 22, 1935.

He was casually employed elsewhere after the strike but not in substantially similar employment as that with Respondent.

14. *Grover D. Windsor* entered Respondent's employ June 8, 1934, and was employed operating a mucking machine on June 10, 1935, when as a member of the Union he went on strike. He remained on the picket line until June 26, 1935.

In November, 1936, he entered the employ of the Shattuck Den Mining Company.

Between June 26, 1935, and November, 1936, he had casual employment elsewhere but not substantially equivalent to that had by him with Respondent.

Although this employee was not on the picket line after June 26, 1935, the reason for his not being so active in behalf of the Union after this date, was that, on said date and until the termination of the strike, he was confined to the County Jail on the complaint of the Respondent or its agents.

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After July 5, 1935, he was refused employment by the Respondent because he was a member of the Union after July 5, 1935, and because of the aid he rendered his fellow Union employees in prosecuting the strike.

15. *Joe Henry Dunkerson* entered Respondent's employ in 1931 and was employed by Respondent as a tool nipper on June 10, 1935, when, as a member of the Union, he went on strike. He was active in the picket line after July 5, 1935. He was casually employed by others after the strike but not at substantially equivalent employment as that with Respondent.

16. *Vernon Dell Curtis* was employed by the Respondent before June 14, 1934, when he was discharged. He was not an employee of Respondent when the strike commenced on June 10, 1935, but he was a member of the Union and as such he served in the picket line. Thereafter and until the termination of the strike he was so engaged.

After the strike, he was refused employment by Respondent for the reason that he had participated in union activities after July 5, 1935. He was casually employed elsewhere after the strike but not in substantially equivalent employment to that had by him with Respondent.

As this man was not an employee of the Respondent when the strike commenced or at any time thereafter the allegations of the Complaint as to him should be dismissed.

17. *Grover Cornett* was originally employed by Respondent in 1929. He was laid off February 19, 1930, and on June 7, 1935, was rehired to go to work on June 10, 1935. He did not go to work on that date but went on strike as a member of the Union. The following day, he commenced serving on the picket line. He continued in this capacity until August 15, 1935.

He entered the employ of the Shattuck Den Mining Company in May, 1936, and was there employed at the time of the hearing.

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As it does not appear that this man was actively employed by Respondent when he went on strike, or at any time thereafter, the allegations of the Complaint as to him should be dismissed.

18. *Martin Vaclav* entered the employment of the Calumet & Arizona Mining Company in 1927. At the time of the merger in 1931, he was transferred to the Respondent's pay roll. He was employed by Respondent as a miner on June 10, 1935, when he went on strike as a member of the Union. He served on the picket line thereafter until the latter part of July, 1935.

He entered the employment of the Shattuck Den Mining Company in January, 1937, and remained there until May, 1937. In October, 1937, he reentered the employment of the Shattuck Den Mining Company and continued there until the time of the hearing in this matter. After the termination of the strike he had other casual employment but none substantially equivalent to that with Respondent.

19. *Monte Reed* entered Respondent's employment in 1933 and continued until June 11, 1935, when he went on strike. He joined the picket line that day and continued in that activity until June 26, 1935.

He entered the employment of Shattuck Den Mining Company August 14, 1936, and continued there until the time of the hearing in this matter.

After the termination of the strike, this employee had other casual employment but not substantially equivalent to that with Respondent.

Although this employee was not on the picket line after June 26, 1935, the reason for his not being so active in behalf of the Union was that on said date and until the termination of the strike he was confined in the County Jail on the complaint of Respondent or its agents.

After July 5, 1935, he was refused employment by the Respondent because he was a member of the Union after



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said date and because of the aid he rendered his fellow Union members in prosecuting the strike.

20. *Clyde Bigelow* entered Respondent's employ in 1931. He worked for short periods until 1933, after which time he was continuously employed by Respondent as a miner until June 10, 1935, when he went on strike. He was not a member of the Union at the time of the strike nor did he participate in the picket line activities of the Union.

After the termination of the strike, he was refused employment by the Respondent because he had participated in the strike and thereby had assisted the Union after July 5, 1935.

After the termination of the strike, he secured casual employment elsewhere but said employment was not substantially equivalent to that held by him with Respondent at the time of the strike.

In June, 1936, this employee was examined for a job as a miner with the Shattuck Den Mining Company. He was rejected because his physical examination at that time disclosed that he had silicosis.

It cannot be presumed that this employee would have been capable of performing his duties as a miner for the Respondent after June, 1936. It will therefore be recommended that Respondent be not required to offer him re-employment or back pay after June 1, 1936.

21. *Milton Wynn* entered Respondent's employ in 1925. He worked for a short period thereafter, left Respondent and returned in 1934. He was continuously employed by Respondent after 1934 until June 10, 1935, as a gunite machine operator.

On June 10, 1935, he went on strike as a member of the Union. He did not take part in the picketing. He was employed casually elsewhere after the termination of the strike but not in substantially equivalent employment to that held with Respondent at the time of the strike.

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He was refused reinstatement by the Respondent after the termination of the strike because of his being on strike and his membership in the Union after July 5, 1935.

22. *Alexander Kalastro* entered Respondent's employ in August, 1934. He was employed by Respondent as a swamper on June 12, 1935, when he went on strike. He served in the picket line for one day, on June 12, 1935.

After July 5, 1935, he was refused employment by Respondent because of his striking and the assistance he thereby gave the Union. Shortly after he went on strike, he received other casual employment not substantially equivalent to that held by him with Respondent at the time he went on strike.

He entered the employ of Shattuck Den Mining Company as a miner in February, 1937, and was employed by that Company continuously thereafter until some time in January, 1938.

23. *W. H. Bigelow* entered Respondent's employ in 1908. He was not employed continuously thereafter but on several occasions worked for Respondent until the Spring of 1934, when he commenced continuous employment as a miner. He went out on strike June 10, 1935, and, as a member of the Union, participated in the picket line thereafter. He was in the picket line after July 5, 1935.

He entered the employ of Shattuck Den Mining Company in December, 1936, and was there employed at the time of the hearing. He had other casual employment between the termination of the strike and the time he entered the employ of Shattuck Den Mining Company but not substantially equivalent to that held with Respondent at the time of the strike.

24. *William Windsor* entered Respondent's employ in 1925. He did not work continuously with Respondent, however, until September, 1933, after which he was continuously employed by Respondent.

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On June 10, 1935, he went out on strike as a member of the Union. He was then employed as a miner. He was active in the picket line from the commencement of the strike until about July 15, 1935. He entered the employ of Shattuck Den Mining Company on December 2, 1936, as a mucker. He was so employed at the time of the hearing.

Between the termination of the strike and the date of his entering the employment of the Shattuck Den Mining Company he was casually employed elsewhere but not in substantially equivalent employment to that held by him with Respondent at the time of the strike.

25. *Ellis Meran Scales* entered Respondent's employ in February, 1926. He was continuously employed until June 10, 1935, when, as a member of the Union, he went out on strike. At the time of the strike he was employed as a motorman. He was active on the picket line from the commencement of the strike until August 24, 1935.

He entered the employ of the Shattuck Den Mining Company in October, 1936, and was employed as a Finley operator at the time of the hearing. He had casual employment elsewhere between the termination of the strike and the time he entered the employment of the Shattuck Den Mining Company but not substantially similar employment to that with Respondent at the time of the strike.

26. *Frank Erkkila* entered Respondent's employ June 1, 1934. He was employed as a mucker June 10, 1935, when he went out on strike as a member of the Union. He was active on the picket line from the commencement of the strike until the latter part of August, 1935.

He entered the employ of Shattuck Den Mining Company in January, 1936, and was employed by that Company as a miner at the time of the hearing.

27. *Luke Sertich* entered Respondent's employ in the Spring of 1924. He worked until August 15, 1930, when he was laid off. He returned to Respondent in September,



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1933, and worked continuously as a track man and a miner until June 10, 1935, when, as a member of the Union, he went out on strike. He was active on the picket line from the commencement of the strike until about August 15, 1935.

He entered the employ of the Shattuck Den Mining Company on September 5, 1936, and was continuously employed by that Company as a miner from that date until the time of hearing.

From the termination of the strike until the time of his employment by Shattuck Den Mining Company, he had other casual employment elsewhere but not substantially similar to that held by him with Respondent at the time of the strike.

28. *Merrell Ernest Johnson* entered the employ of the Calumet & Arizona Mining Company in 1928. He worked for that Company until it merged with Respondent in 1931.

From 1934 until June 10, 1935, he was continuously employed by Respondent. On the last date, he was employed as a toplander helper. He then, as a member of the Union, went on strike. He was active in the picket line thereafter.

In the Spring of 1936, he entered the employ of Shattuck Den Mining Company. He was employed continuously by that Company from then until the time of the hearing.

Between the termination of the strike and the time he entered the employment of the Shattuck Den Mining Company he had other casual employment but not substantially similar to that held by him with Respondent at the time of the strike.

29. *George Gerhardt* first entered Respondent's employ in 1912. He left Respondent in 1913 and returned in June, 1915. He continued with Respondent thereafter until June 10, 1935, when, as a member of the Union, he went out on strike. On June 10, 1935, he was employed by Respondent as a steel sharpener. He was active in behalf of the Union on the picket line during the strike.

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After the termination of the strike he had other casual employment but not substantially equivalent to that held by him with the Respondent at the time of the strike.

30. *William Graham* entered Respondent's employment in June, 1934. He was continuously employed by Respondent thereafter and on June 10, 1935, as a member of the Union, went on strike. At that time he was employed by Respondent as a pocket man. He served on the picket line from the commencement of the strike until August 24, 1935.

He entered the employ of the Shattuck Den Mining Company November 23, 1936, and worked continuously for that Company until the time of the hearing.

Between the termination of the strike and November 23, 1936, he had casual employment elsewhere but not substantially equivalent to that held by him with the Respondent at the time of the strike.

31. *William E. Sharp* entered Respondent's employ in 1929. He was laid off about a year later. On June 7, 1935, he was reemployed by Respondent. On June 10, 1935, pursuant to this reemployment, he went to work for Respondent as a blacksmith's helper. He went out on strike on June 11, 1935, and was active in behalf of the Union, serving on the picket line until about August 1, 1935.

After the termination of the strike, he secured casual employment elsewhere but not substantially equivalent to that held by him with the Respondent at the time of the strike.

32. *Richard Johnson* entered the employ of the Shattuck Den Mining Company April 9, 1936. On that date, he joined the Union for the first time. He did not participate in the strike.

In January, February and March, 1936, for the first time he applied to Respondent for employment. He was refused employment, the reason being given him that other members of his family were not in good standing with the Respond-

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ent. His father and brother were formerly employed by the Respondent.

The allegations of the Complaint as to this person should be dismissed.

33. *Lester F. Bethel* entered the employment of the Calumet & Arizona Mining Company in 1925. He was transferred to Respondent's pay roll at the time of the merger in 1931 and he continued with the Respondent thereafter. On June 10, 1935, he was employed by Respondent as a motorman and on that date, as a member of the Union, he went out on strike. He was active in the picket line in behalf of the Union until about August 20, 1935.

After July 16, 1935, he had casual employment elsewhere but not substantially equivalent to that held by him with Respondent at the time he went out on strike.

34. *Mike Mihelich* entered the employment of the Calumet & Arizona Mining Company in 1916. In 1931, at the time of the merger, he was transferred to the pay roll of the Respondent. He worked continuously for Respondent thereafter, and, on June 10, 1935, he was employed by Respondent as a timberman when, as a member of the Union, he went out on strike. He was active in the picket line thereafter until about the 15th of August, 1935.

After the termination of this strike he had casual employment elsewhere but not substantially equivalent to that held by him with the Respondent at the time of the strike.

35. *Pete D. Caretto* entered the employment of the Calumet & Arizona Mining Company in 1922. In 1931, at the time of the merger, he was transferred to the pay roll of the Respondent. He left Respondent's employ in 1931 and returned in 1932 and was continuously employed by Respondent thereafter.

On June 10, 1935, he was employed by Respondent as a top man and on that date, as a member of the Union, he went out on strike. He served in the picket line in behalf of the Union until August 21, 1935.



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After the termination of the strike, he had casual employment elsewhere but not substantially equivalent to that held by him with Respondent at the time of the strike.

36. *Henry Waters* entered Respondent's employ in 1927. He was laid off in 1929. He returned to Respondent's employ in 1933 and was employed by Respondent continuously thereafter.

On June 10, 1935, he was employed by Respondent as a miner and on that date, as a member of the Union, went out on strike. He was active in the picket line thereafter until August 20, 1935.

Some time in 1937, (the record does not specify the day or month), he applied to the Shattuck Den Mining Company for employment, and, after a physical examination, he was found to have silicosis and rejected for that reason.

As he was employed by Respondent as a miner at the time of the strike, and as the record does not show that he was physically able to perform the duties of a miner after 1937, the Respondent should not be required to offer this employee reinstatement nor back pay after January 1, 1937.

37. *P. C. Lytle* entered the employ of the Calumet & Arizona Mining Company in 1927. In 1931, at the time of the merger, he was transferred to the pay roll of the Respondent and was employed by Respondent continuously thereafter.

On June 10, 1935, he was employed by Respondent as a repair man and on that date, as a member of the Union, he went on strike. He was not active in the picket line during the strike.

After the termination of the strike, he was refused reinstatement by the Respondent because he went on strike and remained on strike after July 5, 1935.

After the termination of the strike, he had casual employment elsewhere but not substantially equivalent to that held by him with Respondent at the time of the strike.

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38. *Jesse Edge* entered Respondent's employ in 1929. He was continuously employed by Respondent thereafter. On June 10, 1935, he was employed by Respondent as motorman and, on that date, as a member of the Union, he went on strike. He served on the picket line thereafter until about August 15, 1935.

He entered the employ of the Shattuck Den Mining Company on July 23, 1937, and had been continuously employed by that Company from said date until the time of hearing.

After August 15, 1935, he had casual employment elsewhere but not substantially equivalent to that held by him with Respondent at the time of the strike.

39. *Herschel J. Montgomery* entered Respondent's employ in 1930. He was employed by Respondent until July 3, 1934. On July 20, 1934, he returned to Respondent's employ and worked for the Respondent continuously thereafter.

On June 10, 1935, he was employed by Respondent as repair man in the boiler shop and, as a member of the Union, he then went out on strike. He was active in the picket line thereafter until about August 10, 1935. After August 10, 1935, he had casual employment elsewhere but not substantially equivalent to that held by him with Respondent at the time of the strike.

40. *J. M. Morris* entered the employ of the Calumet & Arizona Mining Company in June, 1926. In 1931, as a result of the merger, he was transferred to the pay roll of the Respondent. He worked continuously for Respondent thereafter.

On June 10, 1937, he was employed by Respondent as a powder man and, on that date, as a member of the Union, he went out on strike. He served on the picket line thereafter until about June 25, 1935. After that date and until the termination of the strike, he served in the strike headquarters of the Union thereby assisting the Union in maintaining the strike.

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After the termination of the strike, he had casual employment elsewhere but not substantially equivalent to that held by him with the Respondent at the time of the strike.

41. *Leonard Guess* entered the employ of the Calumet & Arizona Mining Company before 1931 when at the time of the merger he was transferred to the pay roll of the Respondent. He was employed by Respondent continuously thereafter until January 14, 1935, when he voluntarily left Respondent's employment.

On June 10, 1935, he was not an employee of the Respondent but was a member of the Union. He did not participate in the picket line.

After the termination of the strike, he applied to Respondent for employment but was refused because of his Union membership.

In January, 1936, he entered the employ of the Shattuck Den Mining Company and remained in its employ until August, 1936. He was casually employed elsewhere but not in employment substantially equivalent to that held by him with the Respondent before January 14, 1935.

As this man was not an employee of the Respondent on June 10, 1935, or any time thereafter, the allegations of the Complaint as to him should be dismissed.

42. *Frank Peterson* entered Respondent's employ in January, 1935. On June 10, 1935, he was employed by Respondent as a miner when, as a member of the Union, he went out on strike. He served on the picket line from the commencement of the strike until about August 10, 1935.

After the termination of the strike, he had casual employment elsewhere but not substantially equivalent to that held by him with Respondent at the time of the strike.

43. *H. D. Edge* entered Respondent's employ in 1924. With the exception of a short vacation, he worked for Respondent continuously thereafter.



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On June 10, 1935, he was employed by Respondent as a miner and, on that date, as a member of the Union, he went out on strike. He served on the picket line in behalf of the Union after July 5, 1935.

After the termination of the strike, he was casually employed elsewhere but not in substantially equivalent employment to that held by him with Respondent at the time of the strike.

44. *Ben H. Stringer* entered Respondent's employ in 1934 and was employed by Respondent continuously thereafter.

On June 10, 1935, he was employed by Respondent as a mucker when, as a member of the Union, he went out on strike. He served on the picket line from the commencement of the strike until about August 22, 1935. In April, 1935, he entered the employ of the Shattuck Den Mining Company. He was later discharged by that Company.

45. *George C. Rohrer* entered the employ of the Calumet & Arizona Mining Company in 1928. In 1931, at the time of the merger, he was transferred to Respondent's pay roll and worked for Respondent continuously thereafter.

On June 10, 1935, he was employed by Respondent as a motorman when, as a member of the Union, he went out on strike. He served on the picket line in behalf of the Union after July 5, 1935.

Said W. M. Day, Levi Crandal, Edgar Lewis Hargus, John Henry Key, George Frazee, John Patrick Foley, Edward Bowden, Paul Amaro, Wilford Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Grover D. Windsor, Joe Henry Dunkerson, Martin Vaclav, Monte Reed, Clyde Bigelow, Milton Wynn, Alexander Kalastro, W. H. Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William E. Sharp, Lester F. Bethel, Mike Mihelich, Pete D. Caretto,

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Henry Waters, P. C. Lytle, Jesse Edge, Herschel J. Montgomery, J. M. Morris, Frank Peterson, H. D. Edge, Ben H. Stringer and George C. Rohrer, were employees of Respondent on July 5, 1935, and remained employees of Respondent at all times herein referred to thereafter.

On August 9, 1935, and again on August 23, 1935, each of said employees was refused employment by the Respondent for the reason that said W. M. Day, Levi Crandal, Edgar Lewis Hargus, John Henry Key, George Frazee, John Patrick Foley, Edward Bowden, Paul Amaro, Wilford Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Grover D. Windsor, Joe Henry Dunkerson, Martin Vaclav, Monte Reed, Clyde Bigelow, Milton Wynn, Alexander Kalastro, W. H. Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William E. Sharp, Lester F. Bethel, Mike Mihelich, Pete D. Caretto, Henry Waters, P. C. Lytle, Jesse Edge, Herschel J. Montgomery, J. M. Morris, Frank Peterson, H. D. Edge, Ben H. Stringer and George C. Rohrer, joined and assisted a labor organization known as the International Union of Mine, Mill & Smelter Workers, Local No. 30, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

By said refusal to employ said W. M. Day, Levi Crandal, Edgar Lewis Hargus, John Henry Key, George Frazee, John Patrick Foley, Edward Bowden, Paul Amaro, Wilford Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Grover D. Windsor, Joe Henry Dunkerson, Martin Vaclav, Monte Reed, Clyde Bigelow, Milton Wynn, Alexander Kalastro, W. H. Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William E. Sharp, Lester F. Bethel, Mike Mihelich, Pete D. Caretto, Henry Waters, P. C. Lytle, Jesse Edge, Herschel J. Montgomery, J. M. Morris, Frank Peterson, H. D. Edge,

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Ben H. Stringer and George C. Rohrer, Respondent has interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act.

By said refusal to employ W. M. Day, Levi Crandal, Edgar Lewis Hargus, John Henry Key, George Frazee, John Patrick Foley, Edward Bowden, Paul Amaro, Wilford Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Grover D. Windsor, Joe Henry Dunkerson, Martin Vaclav, Monte Reed, Clyde Bigelow, Milton Wynn, Alexander Kalastro, W. H. Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William E. Sharp, Lester F. Bethel, Mike Mihelich, Pete D. Caretto, Henry Waters, P. C. Lytle, Jesse Edge, Herschel J. Montgomery, J. M. Morris, Frank Peterson, H. D. Edge, Ben H. Stringer and George C. Rohrer, Respondent has discouraged membership in a labor organization known as the International Union of Mine, Mill & Smelter Workers, Local No. 30.

### III.—INTERSTATE COMMERCE.

Respondent's Copper Queen Branch, Mines Division, (where the labor dispute herein reported occurred), at Bisbee, Arizona, produced 795,946 dry tons of ore in 1936 and 967,249 dry tons in 1937. In 1936, Respondent shipped 785,061 tons of copper smelting ore to its smelter at Douglas, Arizona, and 10,453 tons of basic sulphide ore to the smelter of another corporation at El Paso, Texas. In 1936, Respondent shipped 432 tons of silver-lead ore from the Copper Queen Mine to the refinery of its wholly-owned subsidiary, the Nichols Copper Company at El Paso, Texas. In 1936, Respondent shipped 967,049 tons of copper smelting ore from its Copper Queen Mine to its smelter at Douglas, Arizona, and 200 tons of silver-lead ore to the refinery of the Nichols Copper Company at El Paso, Texas.



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In 1936, Respondent purchased 593,347,000 cubic feet of natural gas from the El Paso Natural Gas Company at El Paso, Texas, and had said gas delivered to it by pipeline from the State of New Mexico to the Copper Queen Mine in the State of Arizona. In 1937, Respondent purchased 698,959,000 cubic feet of gas from the same seller and under the same conditions of delivery.

In 1936, Respondent purchased 22,841 barrels and in 1937, 37,177 barrels of fuel oil from sellers thereof located outside the State of Arizona and had said oil shipped from states other than the State of Arizona to its Copper Queen Mine.

These materials were used by the Respondent in its mining operations recovering the products of its Copper Queen Mine, which said recovered products were then shipped by Respondent as above reported.

In 1935, the Nichols Copper Company at El Paso, Texas, produced more than 121,000,000 pounds of copper from the products of Respondent's mines; in 1936, the Nichols Copper Company produced at El Paso, Texas, and Laurel Hill, New York, more than 192,000,000 pounds of copper from products of Respondent's mines. These products of the Nichols Copper Company, (Respondent's wholly-owned subsidiary) are shipped and sold to purchasers thereof located in States other than the State of the origin of the shipment.

Respondent had at all times referred to herein wholly-owned subsidiaries engaged in mining in the State of Sonora, Mexico; in copper refining in Texas and New York; in copper fabricating in New Jersey, New York, Indiana and California; in operating public utilities in Arizona; in wholesale and retail merchandising of food and clothing in Arizona and New Mexico; in railroad operation in Arizona; in fuel merchandising in New Mexico; and, in publishing newspapers in Arizona.

The operations of all of its subsidiaries were integrated with those of the Respondent and all assisted Respondent in

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producing raw materials, manufacturing them into finished products, selling and shipping said finished products to purchasers thereof located in states other than the State of the origin of the shipment.

Respondent normally employed approximately 1,000 men at its Copper Queen Mine at all times referred to herein.

As a result of the labor dispute and strike reported herein, Respondent's normal production at its Copper Queen Mine was reduced about 1,000,000 pounds of ore in the month of June, 1935.

Respondent has never entered into any contract with any labor organization in connection with the operations of its Copper Queen Mine.

I find that the activities of the Respondent as set forth in Section II occurring in connection with the operations of Respondent as set forth in Sections I and III have a close, intimate and substantial relation to trade, traffic and commerce among the several states and have led and tend to lead to labor disputes burdening commerce and the free flow of commerce.

*CONCLUSIONS AND RECOMMENDATIONS.*

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes:

1. The allegations of the Complaint as to William Daugherty, Vernon Dell Curtis, Grover Cornett, Richard Johnson, and Leonard Guess should be dismissed.

2. Respondent by refusing to reinstate to their former positions W. M. Day, Levi Crandal, Edgar Lewis Hargus, John Henry Key, George Frazee, John Patrick Foley, Edward Bowden, Paul Amaro, Wilford Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Grover D. Windsor, Joe Henry Dunkerson, Martin Vaclav, Monte Reed, Clyde Bigelow, Milton Wynn, Alexander Kalastro, W. H. Bigelow, William Windsor, Ellis

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Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William E. Sharp, Lester F. Bethel, Mike Mihelich, Pete D. Caretto, Henry Waters, P. C. Lytle, Jesse Edge, Herschel J. Montgomery, J. M. Morris, Frank Peterson, H. D. Edge, Ben H. Stringer and George C. Rohrer and thus discouraging membership in the labor organization known as the International Union of Mine, Mill & Smelter Workers, Local No. 30, and by interfering with, restraining and coercing its workers in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

3. Respondent, by refusing to reinstate to their former positions, W. M. Day, Levi Crandal, Edgar Lewis Hargus, John Henry Key, George Frazee, John Patrick Foley, Edward Bowden, Paul Amaro, Wilford Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Grover D. Windsor, Joe Henry Dunkerson, Martin Vaclav, Monte Reed, Clyde Bigelow, Milton Wynn, Alexander Kalastro, W. H. Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William E. Sharp, Lester F. Bethel, Mike Mihelich, Pete D. Caretto, Henry Waters, P. C. Lytle, Jesse Edge, Herschel J. Montgomery, J. M. Morris, Frank Peterson, H. D. Edge, Ben H. Stringer and George C. Rohrer, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

WHEREFORE, the undersigned recommends that:

1. Respondent cease and desist from interfering with, restraining and coercing its employees in the exercise of the



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right to self organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

2. Respondent cease and desist from discouraging membership in any labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment.

3. In order to effectuate the policies of the Act, Respondent take the following affirmative action:

(a) Offer to said W. M. Day, Levi Crandal, Edgar Lewis Hargus, John Henry Key, George Frazee, John Patrick Foley, Edward Bowden, Paul Amaro, Wilford Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Grover D. Windsor, Joe Henry Dunkerson, Martin Vaclav, Monte Reed, Milton Wynn, Alexander Kalastro, W. H. Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William E. Sharp, Lester F. Bethel, Mike Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Herschel J. Montgomery, J. M. Morris, Frank Peterson, H. D. Edge, Ben H. Stringer and George C. Rohrer immediate and full reinstatement to their former positions without prejudice or loss of seniority or other rights or privileges previously enjoyed;

(b) Make whole to said W. M. Day, Levi Crandal, Edgar Lewis Hargus, John Henry Key, George Frazee, John Patrick Foley, Edward Bowden, Paul Amaro, Wilford Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Grover D. Windsor, Joe Henry Dunkerson, Martin Vaclav, Monte Reed, Clyde Bigelow, Milton Wynn, Alexander Kalastro, W. H. Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William E. Sharp, Lester F. Bethel, Mike Mihelich,

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Pete D. Caretto, Henry Waters, P. C. Lytle, Jesse Edge, Herschel J. Montgomery, J. M. Morris, Frank Peterson, H. D. Edge, Ben H. Stringer and George C. Rohrer, for any losses in pay they may have suffered by reason of Respondent's failure to employ them between August 9, 1935, and the date of offer of reinstatement hereinbefore recommended, by paying to each of them a sum of money equivalent to that which each of them would normally have earned in wages during said period, less earnings from other employment during said period; provided that Respondent shall not be required to pay to said Clyde Bigelow any amount of money equivalent to that which he would normally have earned in wages after June 1, 1936; and, that Respondent shall not be required to pay to the said Henry Waters any amount of money equivalent to that which he would normally have earned in wages after January 1, 1937;

(c) Post notices in conspicuous places stating: (1), that Respondent will cease and desist in the manner aforesaid; (2), that such notices will remain posted for a period of at least thirty (30) consecutive days after date of posting; and, (3), file with the Regional Director for the Twenty-first Region on or before ten (10) days from the receipt of this Report, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

It is further recommended that unless on or before ten (10) days from the receipt by Respondent of this Report, Respondent notifies the said Regional Director in writing that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board and that said Board issue an order requiring Respondent to take the action aforesaid.

Sgd. THOMAS H. KENNEDY,  
THOMAS H. KENNEDY,  
Trial Examiner

Dated: this 16th day of March, 1938.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

IN THE MATTER OF  
PHELPS DODGE CORPORATION, a corpo-  
ration,  
and  
INTERNATIONAL UNION OF MINE, MILL,  
and SMELTER WORKERS, LOCAL No. 30.

CASE No.  
XXI-C-266

**Respondent's Exceptions to the Record and to the Inter-  
mediate Report and Rulings of the  
Trial Examiner.**

Pursuant to Section 34, Article II, Series 1, as amended, of the Rules and Regulations promulgated by the National Labor Relations Board, respondent presents herewith its exceptions to the record and to the Intermediate Report and rulings of the Trial Examiner in the above entitled case. For the purpose of continuity and clarity these exceptions follow the form of the Intermediate Report which was served upon respondent on the 23rd day of March, 1938. The abbreviation "Int. Rep." refers to the Intermediate Report, and the abbreviation "Tr." refers to the Official Transcript of the hearing.

**A—THE ANSWER.**

Respondent takes exception to the statement (Int. Rep. p. 2) relative to the answer filed by respondent, which is contained in Board's Exhibit No. 1, admitted in evidence by the Trial Examiner without objection (Tr. p. 4). An examination of respondent's answer as contained in Board's Exhibit 1 will show that respondent did not admit the inter-



*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

state character of its operations, but that respondent merely admitted, denied or made further specific allegations with respect to respondent's corporate activities. Respondent did not deny that the employees named in the complaint were discharged in violation of the Act for the reason that no such allegations were contained in the complaint. Paragraph XXII of respondent's answer (Board's Exhibit No. 1) constitutes respondent's denial and answer with respect to the allegations contained in paragraph 36 of the complaint which are to the effect that respondent has refused to reinstate certain specified individuals formerly employed by respondent.

**B—RULINGS ON MOTIONS AND EVIDENCE.**

Respondent takes exception to the ruling of the Trial Examiner (Tr. p. 7) denying six written motions to dismiss, which were directed to the sufficiency of the allegations of the complaint and were filed with the Regional Director for the Twenty-First Region within the time in which respondent was required to answer the complaint. This exception is predicated upon the same grounds as those advanced in support of the motions.

Respondent takes exception to the rulings of the Trial Examiner (Tr. pps. 741-762) denying six motions to dismiss made by respondent at the hearing at the close of the Board's case. This exception is predicated upon the same grounds as those advanced in support of the motions.

Respondent takes exception to the rulings of the Trial Examiner (Tr. p. 936) denying seven motions to dismiss made by respondent at the conclusion of the hearing, six of the said motions being a renewal of those made at the close of the Board's case (Tr. pps. 741-762) and the seventh being an additional motion set forth on page 936 of the Transcript. This exception is predicated upon the same grounds as those advanced in support of the motions.

*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

Respondent takes exception to the rulings of the Trial Examiner (Int. Rep. p. 3) denying nine written motions to dismiss which were filed by respondent with the Trial Examiner at the conclusion of the hearing. This exception is predicated upon the same grounds as those advanced in support of the motions. This exception does not go to that portion of the Trial Examiner's ruling (Int. Rep. p. 3) which recommends the dismissal of the complaint as to William Daugherty, Vernon Dell Curtis, Grover Cornett, Richard Johnson and Leonard Guess. In this connection respondent points out that to this list of names as to whom the Trial Examiner has recommended dismissal of the complaint should be added the name of John Patrick Foley, in conformity with the findings of the Trial Examiner (Int. Rep. p. 8) with respect to that individual.

In addition to the foregoing respondent takes exception to the ruling of the Trial Examiner (Tr. pps. 4 and 5) overruling the objection of respondent to the introduction in evidence of Board's Exhibit No. 2, which purports to be a publication of the United States Department of Labor entitled "An Analysis of Strikes". This exception is predicated upon the grounds that Board's Exhibit No. 2 is incompetent, irrelevant, and immaterial to the issues in the case, is self-serving, and is not supported by a proper foundation in the evidence.

Respondent also takes exception to the ruling of the Trial Examiner (Tr. p. 830) refusing to allow a witness for respondent, Kobey Kennaugh, to answer the following question:

"Q. Has the failure of the company to re-employ any of these, or all of these 48 men, ever led to a dispute between the Association and the company?"

A. It has not."

*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

This exception is predicated upon the ground that the question was proper and was propounded for the purpose of adducing testimony material to the issues in the case.

Respondent also takes exception to the ruling of the Trial Examiner (Tr. p. 848) sustaining an objection to the following question propounded by respondent's counsel to respondent's witness, T. J. Rescola:

"Q. And has the failure on the part of the company to employ any of the men who walked out in June, 1935, or who were on the picket line, led or tended to lead to any dispute between the company and its employees?"

The foregoing exception is also taken to the ruling of the Trial Examiner sustaining objections to a question or questions of similar import propounded by respondent's counsel to respondent's witnesses. H. L. Sullivan (Tr. p. 857).

Said exceptions are predicated upon the ground that the question was proper and was propounded for the purpose of adducing testimony material to the issues in the case.

Respondent takes exception to the ruling of the Trial Examiner (Tr. p. 851) sustaining an objection and striking the answer to the following question propounded to Respondent's witness, T. J. Rescola:

"Q. Can you state whether or not, if the company put these men back to work, a dispute or controversy would be apt to exist between the men now working for the company and the company regarding their reinstatement?"

"A. Yes sir."

This exception is predicated upon the ground that the question was proper and was propounded for the purpose of adducing testimony material to the issues in the case.



*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

C—FINDINGS OF FACT.

I—THE PARTIES.

1. *The Respondent, Phelps Dodge Corporation, a corporation.*

Under the foregoing heading (Int. Rep. p. 3) respondent takes exception to the use of the term "labor dispute" by the Trial Examiner (Int. Rep. p. 4). There is no evidence in the record of a labor dispute current on July 5, 1935.

2. *The Union, International Union of Mine, Mill and Smelter Workers, Local No. 30.*

Respondent takes exception to the finding (Int. Rep. p. 4) to the effect that respondent discharged certain individuals on June 6, 1935 "for their union activity". Such a finding is immaterial to the issues in the case and there is not sufficient evidence in the record to support it.

Respondent takes exception to the finding (Int. Rep. p. 5) that "Pursuant to this strike vote, a large majority of the Union members employed by the Respondent at the Copper Queen Mine struck on June 10, 1935." The Board's witness, W. M. Day, testified, and it was stipulated by counsel, (Tr. pps. 132-133), that no strike vote was ever held in accordance with the requirements of the by-laws of the union. Day further testified (Tr. p. 139) that at no time between June 6, 1935, and June 10, 1935, was the matter of the discharge of certain individuals by respondent on the former date discussed by the union and the management. Day was unable to state whether or not any notice was given to respondent of the union's decision to strike (Tr. p. 139).

Respondent takes exception to the finding (Int. Rep. p. 5) that "This strike continued until August 24, 1935." The evidence shows (Tr. pps. 809, 810, 893, 896-898) that there was no strike in force or effect on July 5, 1935, or at any time thereafter.

*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

**II—REFUSAL TO REINSTATE EMPLOYEES FOR UNION ACTIVITY.**

Respondent takes exception to the finding (Int. Rep. p. 5) that "Respondent's employees named hereinafter were on strike on July 5, 1935, and continued on strike until August 24, 1935." The evidence shows that there was no strike in force or effect on July 5, 1935, or at any time thereafter. M. A. Bateman testified (Tr. p. 809) that on June 7, 1935, there were 941 persons on the payroll at respondent's Copper Queen Branch, Mines Division; that on June 21, 1935, there were 952; that on June 28, 1935, there were 986, and that on July 3, 1935, there were 996. Bateman further testified (Tr. p. 810) that of the persons on the payroll 766 were actually working on June 7, 1935; that 759 were actually working on June 21, 1935; that 766 were actually working on June 28, 1935, and that 808 were actually working on July 3, 1935. J. W. Fisher testified (Tr. p. 893) that in the last week of June, 1935, respondent's operations at its Copper Queen Branch, Mines Division, were normal. Fisher further testified (Tr. p. 897) that respondent actually overproduced during the last week of June, 1935.

Respondent takes exception to the finding (Int. Rep. p. 5) that "In each instance, the employee individually, or through a Committee representing the Union, requested reinstatement from the Respondent after July 5, 1935 particularly on August 9 and 23, 1935, and in each instance this request for reinstatement was refused by Respondent. The reason for this refusal to reinstate was the same in every case, to-wit: That the employee had participated in the strike and had been an active member of the picket line maintained by the Union outside the gate to Respondent's property." Such a finding is not supported by the evidence.

Respondent takes exception to the finding (Int. Rep. p. 5) that "Respondent's determined policy to refuse employment to these men because of their union activity in connection with the strike is reflected in its inter-office cor-

*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

respondence, copies of which appear in the exhibits; (see Board's Exhibits Nos. 59, 60, 61 and 67)." The evidence does not support the finding of such a policy upon the part of respondent, nor is the same reflected in the exhibits referred to.

Respondent takes exception to the finding that respondent's employment agent translated instructions to "go slow" to mean "that he was *not* to reinstate these men." There is no evidence in the record to support such a finding and the employment agent, M. A. Bateman, testified (Tr. p. 165) that he never received any "instructions not to re-hire anybody".

Respondent takes exception to the finding (Int. Rep. p. 6) that "They all expressed the desire to return to Respondent's employ." Such a finding is not supported by the evidence.

Respondent takes exception to the finding (Int. Rep. p. 6) that "Employment by the Respondent is preferable to that by the Shattuck Den Mining Company for the reason that Respondent is a larger, better established organization and can secure to its employees greater regularity and continuity of employment." Such a finding is not supported by the evidence.

Respondent takes exception to the finding (Int. Rep. p. 6) that "By returning to the Respondent, these employees would retain seniority rights which they do not have at the Shattuck Den Mining Company." Such a finding is not supported by the evidence.

Respondent takes exception to the finding (Int. Rep. p. 6) to the effect that individuals involved in the case who have been employed by the Shattuck-Denn Mining Company have not received "other regular and substantially equivalent employment to that held by them at the time of respondent's refusal to reinstate them". The record shows that of the thirty-seven individuals as to whom the Trial Examiner



*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

recommends reinstatement with respondent (Int. Rep. pps. 26-27) twenty-two were in the employ of the Shattuck-Denn Mining Company at the time of the hearing and one, namely, Ben H. Stringer, had been employed by that company but had been discharged for cause. Joseph A. Wilcox, a witness for the Board, testified (Tr. pps. 675-684) that he was the Chief Engineer of the Shattuck-Denn Mining Company. He testified further that that company was originally organized in 1904 and later in 1925 reorganized as the Shattuck-Denn Mining Corporation. He testified that with the exception of a period of two years, from 1932 until 1934, the Shattuck-Denn Mining Company has been operating continuously since 1925. He testified that the reason for the shut-down during the period 1932-1934 was depressed business conditions and that many of the large mining companies in the State of Arizona were not operating during that period. He testified that since 1935 the Shattuck-Denn Mining Company has been working on a six day week basis, except for a period of time since that year when operations were on an alternate six and seven day week basis. He testified that the Shattuck-Denn mines are located at a point 2500 feet from respondent's Junction shaft in Bisbee, Arizona. He testified that the wages have been and are the same as those paid by respondent. He testified that at the time of the hearing the Shattuck-Denn Mining Company had approximately 200 employees and that he knew no reason which would lead him to believe that there would be any interruption of present operations. In this connection he further testified that recently a new ore body of relatively substantial proportions had been developed by the Shattuck-Denn Mining Company. He further testified that there was no prospect of any of these individuals under discussion losing their jobs with the Shattuck-Denn Mining Company. James Malley, a witness for the Board, testified (Tr. pp. 689-695) that he is Deputy State Mine Inspector for the

*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

State of Arizona. He further testified that the ventilation, working conditions, safety conditions and accident records of respondent and of Shattuck-Denn Mining Company are substantially the same. He further testified on the basis of thirty years experience in the mining industry that he would have no preference on the question of working with one company or the other. He also testified that there was no difference in the type of work done by employees of respondent and that done by employees of Shattuck-Denn Mining Company.

In addition to the testimony of these two individuals, who testified on behalf of the Board, there is considerable testimony given by several of the complaining witnesses which tends to establish that employment by the Shattuck-Denn Mining Company is substantially equivalent to employment by respondent. Paul Amaro testified (Tr. p. 307) that there is no difference in the working conditions, wages and hours between respondent and the Shattuck-Denn Mining Company. Grover D. Windsor testified (Tr. pps. 376-377) that he was making \$5.24 a day when he left the employ of respondent and at the time of the hearing he was making \$5.76 a day with the Shattuck-Denn Mining Company. He further testified that he did not think there was any difference in the conditions of employment. Martin Vaclav testified (Tr. p. 423) that he could not see much difference between his former job with respondent and his present job with the Shattuck-Denn Mining Company. W. H. Bigelow testified (Tr. p. 482) that there is not much difference between his present job with the Shattuck-Denn Mining Company and his former job with respondent. Ellis Scales testified (Tr. p. 501) that the same type of minerals are mined by the two companies and that there is no difference in their safety standards. Frank Erkkila testified (Tr. p. 510) that the Shattuck-Denn Mining Company had just opened up a new large ore-body. Luke Sertich testified (Tr.

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p. 517) that at the time he was working for respondent he was receiving \$5.24 a day and that he had received as high as \$6.52 while employed by the Shattuck-Denn Mining Company (Tr. p. 519). William Graham testified (Tr. p. 545) that to the best of his knowledge the Shattuck-Denn Mining Company had been in existence since his birth. John Henry Key testified (Tr. pps. 234-235) that since December 1, 1936, he has been continuously employed by the Shattuck-Denn Mining Company at a rate of pay higher than that at which he was being paid at the time he left the employ of respondent and that he has averaged six days of work a week with the Shattuck-Denn Mining Company as against five with respondent.

*1 and 2—W. M. Day and Levi Crandall:*

Respondent takes exception to the findings (Int. Rep. pps. 6 and 7) that Day's and Crandall's work with the respondent ceased as a consequence of and in connection with a current labor dispute. The Trial Examiner has found that both men were discharged on June 6, 1935. There is no evidence in the record of any labor dispute prior to June 10, 1935. Day testified (Tr. pps. 139-140) that at no time between June 6, 1935, and August 16, 1935, was there any discussion between the Union and respondent relative to the discharge of Day and Crandall and others on June 6, 1935.

Respondent takes exception to the finding (Int. Rep. p. 7) that on June 6, 1935, Crandall was discharged because of membership in the Union. Such a finding is not supported by the evidence and is immaterial to the issues of the case.

Respondent takes exception to the finding (Int. Rep. p. 7) that Crandall was casually employed but did not obtain regular and substantially equivalent employment between July 5, 1935, and June 7, 1937. Crandall testified (Tr. p. 196) that on September 15, 1935, he went to work as a miner for the Keystone Mining Company in Kingman, Arizona.



*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

**3—Edgar Lewis Hargus:**

Respondent takes exception to the finding (Int. Rep. p. 7) that Hargus was casually employed but did not obtain regular and substantially equivalent employment prior to being employed by the Shattuck-Denn Mining Company. Hargus testified (Tr. pps. 206 and 214-215) that in August, 1935, he obtained employment in New Mexico as a jack-hammer operator and received \$5.40 per day. He further testified (Tr. p. 206) that he voluntarily quit that employment.

Respondent takes exception to the finding (Int. Rep. p. 7) that at the hearing Hargus expressed a desire to return to respondent. Not only is such a finding immaterial to the issues of the case, but also Hargus testified (Tr. pps. 213-214) that he did not desire to return to respondent at the rate of pay he was receiving just prior to June 10, 1935.

**4—John Henry Key:**

Respondent takes exception to the finding (Int. Rep. pps. 7 and 8) that Key was casually employed but did not obtain regular and substantially equivalent employment prior to August, 1937. Key testified (Tr. pps. 222-224) that he went to work for the Shattuck-Denn Mining Company in August, 1935 (Tr. p. 227) and that he voluntarily quit that employment in November, 1935 (Tr. p. 223). He further testified that in January, 1936, he was employed as a shaft man by the Sunshine Mining Company at Kellogg, Idaho (Tr. p. 225); that he voluntarily quit that employment; and that he obtained other employment as a mine timberman, from which he was discharged prior to being reemployed by the Shattuck-Denn Mining Company in August, 1937 (Tr. pps. 225-226).

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**5—George Frazee:**

Respondent takes exception to the finding (Int. Rep. p. 8) that Frazee was casually employed but did not obtain regular and substantially equivalent employment prior to February 15, 1937. Frazee testified (Tr. pps. 264-266) that in October, 1936, he became employed as a mine mucker or loader by the Gunnquely Coal Company at Rock Springs, Wyoming, at \$6.86 per day.

**7—Edward Bowden:**

Respondent takes exception to the finding (Int. Rep. p. 8) that Bowden was casually employed but did not obtain regular and substantially equivalent employment between August 25, 1935, and March, 1937. Bowden testified (Tr. pps. 288-290) that he went to work for the Arizona Edison Company in November, 1935, and worked continuously for that company until he became employed by the Shattuck-Denn Mining Company in March, 1937.

**8—Paul Amaro:**

Respondent takes exception to the finding (Int. Rep. p. 9) that Amaro was casually employed but did not obtain regular and substantially equivalent employment between August, 1935, and June, 1936. Amaro testified (Tr. pps. 297-298) that in September, 1935, he went to work for the Boriana Mining Company at Kingman, Arizona, and that he voluntarily quit that employment in March, 1936.

**9—Wilford Davis Mortenson:**

Respondent takes exception to the finding (Int. Rep. p. 9) that Mortenson was casually employed but did not obtain regular and substantially equivalent employment between August, 1935, and August, 1936. Mortenson testified (Tr. pps. 313-314) that in October, 1935, he went to work for the

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Gadsen Garage in Douglas, Arizona, and that he was employed continuously at that job until he went to work for the Shattuck-Denn Mining Company in August, 1936.

*10—Anson Perry Windsor:*

Respondent takes exception to the finding (Int. Rep. p. 9) that Windsor was casually employed but did not obtain regular and substantially equivalent employment between August, 1935, and November, 1936. Windsor testified (Tr. pps. 325-326) that in November, 1935, he went to work for the Pleasant-Hasler Construction Company and that he worked continuously at such employment until he became employed by the Shattuck-Denn Mining Company on November 23, 1936.

*13—Tom Abedin:*

Respondent takes exception to the finding (Int. Rep. p. 10) that Abedin was casually employed but has not obtained regular and substantially equivalent employment since August, 1935. Abedin testified (Tr. p. 362) that in March, 1937, he went to work as a miner for a Mr. McKenna.

*14—Grover D. Windsor:*

Respondent takes exception to the finding (Int. Rep. p. 11) that Windsor was casually employed but did not obtain regular and substantially equivalent employment between June 26, 1935, and November, 1936. Windsor testified (Tr. pps. 373-374) that in December, 1935, he went to work for the Pleasant-Hasler Construction Company; that he continued work for that company until May, 1936.

Respondent takes exception to the finding (Int. Rep. p. 11) that Windsor was confined to the county jail "on the complaint of the respondent or its agents". Such a finding is immaterial to the issues in the case and there is no evidence in the record to support it.



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Respondent takes exception to the finding (Int. Rep. p. 11) that Windsor was refused employment after July 5, 1935, because of union activities. Such a finding is not supported by the evidence.

*15—Joe Henry Dunkerson:*

Respondent takes exception to the finding (Int. Rep. p. 11) that Dunkerson was casually employed but has not obtained regular and substantially equivalent employment since August, 1935. Dunkerson testified (Tr. pps. 384-386) that on June 13, 1936, he went to work for the Sunshine Mining Company in Kellogg, Idaho, and that he continued with that employment for a period of two months, at the expiration of which time he voluntarily quit the job.

*16—Vernon Dell Curtis:*

Respondent takes exception to the finding (Int. Rep. p. 11) that Curtis was refused employment by respondent for the reason that he had participated in union activities after July 5, 1935. Such a finding is not supported by the evidence.

Respondent takes exception to the finding (Int. Rep. p. 11) that Curtis was casually employed but not in substantially equivalent employment to that with respondent. Curtis testified (Tr. p. 399) that in January, 1937, he went to work for Shattuck-Denn Mining Company.

*19—Monte Reed:*

Respondent takes exception to the finding (Int. Rep. p. 13) that Reed was confined in the county jail "on the complaint of respondent or its agents". Such a finding is immaterial to the issues of the case and there is no evidence in the record to support it.

Respondent takes exception to the finding (Int. Rep. p. 13) that after July 5, 1935, Reed was refused employment

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by respondent because he was a member of the Union after said date and because of the aid he rendered his fellow Union members in prosecuting the strike. There is insufficient evidence in the record to support such a finding.

*20—Clyde Bigelow:*

Respondent takes exception to the finding (Int. Rep. p. 13) that after the termination of the strike Bigelow was refused employment by respondent because he had participated in the strike and thereby had assisted the Union after July 5, 1935. There is insufficient evidence in the record to support such a finding.

Respondent takes exception to the finding (Int. Rep. p. 13) that since the termination of the strike Bigelow has been casually employed but has not obtained regular and substantially equivalent employment. Bigelow testified as to various other employments obtained by him which constitute regular and substantially equivalent employment (Tr. pps. 440-441, 444-450).

*21—Milton Wynn:*

Respondent takes exception to the finding (Int. Rep. p. 13) that on June 10, 1935, he went on strike as a member of the Union. Wynn testified (Tr. p. 454) that he was not a member of the Union in June, 1935.

Respondent takes exception to the finding (Int. Rep. p. 13) that Wynn has been casually employed but has not obtained regular and substantially equivalent employment since August, 1935. Wynn testified (Tr. p. 457) that in November, 1935, he went to work for the Inspiration Copper Company, and from his further testimony it appears that since leaving that employment he has had other regular employment substantially equivalent to his employment with respondent (Tr. pps. 458-459).

*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

Respondent takes exception to the finding (Int. Rep. p. 14) that Wynn was refused reinstatement by respondent after the termination of the strike because of his being on strike and his membership in the Union after July 5, 1935. There is no evidence in the record to show that Wynn was ever refused reinstatement and Wynn testified (Tr. p. 461) that he dropped out of the Union in 1934.

*22—Alexander Kalastro:*

Respondent takes exception to the finding (Int. Rep. p. 14) that Kalastro was employed by the Shattuck-Denn Mining Company until sometime in January, 1938. Kalastro testified (Tr. p. 466) that he was employed by that company at the time of the hearing.

*24—William Windsor:*

Respondent takes exception to the finding (Int. Rep. p. 15) that Windsor was casually employed but did not obtain regular and substantially equivalent employment between August, 1935, and December, 1936. Windsor testified (Tr. p. 487) that he went to work for the Pleasant-Hasler Construction Company on July 16, 1935, and that he worked continuously at that employment for over a year.

*25—Ellis Meran Scales:*

Respondent takes exception to the finding (Int. Rep. p. 15) that Scales was casually employed but did not obtain regular and substantially equivalent employment between August, 1935, and October, 1936. Scales testified (Tr. pps. 495-497) to other employment which he had had during that period which was regular and substantially equivalent to his employment with respondent.



*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

*28—Merrill Ernest Johnson:*

Respondent takes exception to the finding (Int. Rep. p. 16) that Johnson, as a member of the Union, went on strike. Johnson testified (Tr. p. 526) that he was not a member of the Union at the time of the strike. He further testified (Tr. p. 534) that he first joined the Union when he entered the employment of the Shattuck-Denn Mining Company in the Spring of 1936.

*30—William Graham:*

Respondent takes exception to the finding (Int. Rep. p. 17) that Graham was casually employed but did not obtain regular and substantially equivalent employment between August, 1935, and November, 1936. Graham testified (Tr. pps. 546-549) that in September, 1935, he went to work for the Boriama Mining Company at Kingman, Arizona, and that he continued in that employment until May, 1936, when he was discharged. Graham further testified (Tr. pps. 550-551) that on June 25, 1936, he went to work for the Sunshine Mining Company in Kellogg, Idaho, and that he remained in the employ of that company until November, 1936, at which time he voluntarily quit the job.

*31—William E. Sharp:*

Respondent takes exception to the finding (Int. Rep. p. 17) that since August, 1935, Sharp has been casually employed but has not obtained regular and substantially equivalent employment. Sharp testified (Tr. p. 562) that since October, 1937, he has been employed as a miner by the Alpine Mining Company at El Frieda, Arizona; that he was employed by that company at the time of the hearing. Sharp further testified (Tr. pps. 564-565) that in December, 1936, he went to work as a miner with the Boanie Mining Company at Lordsburg, New Mexico; that he voluntarily left

*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

that employment in August, 1937. Sharp also testified (Tr. p. 566) that for three or four months prior to going to work for the Bonnie Mining Company he was employed in Douglas, Arizona, by J. A. Cason.

**33—Lester F. Bethel:**

Respondent takes exception to the finding (Int. Rep. pps. 17 and 18) that since July 16, 1935, Bethel has been casually employed but has not obtained regular and substantially equivalent employment. Bethel testified (Tr. p. 583) that on December 5, 1936, he obtained employment driving a bus for a Southern Pacific contractor; that he had been continuously so employed since that date, and that he was so employed at the time of the hearing and receiving a salary of \$130.00 a month. Bethel also testified (Tr. pps. 584-585) to other employment which he had had prior to his present job which constituted regular employment substantially equivalent to his employment with respondent.

**34—Mike Mihelich:**

Respondent takes exception to the finding (Int. Rep. p. 18) that Mihelich was casually employed but has not obtained regular and substantially equivalent employment since August, 1935. Mihelich testified (Tr. p. 593) that in November, 1936, he was employed as a miner by a Mr. McKenna and that he worked at that employment continuously for a period of about a year.

**35—Pete D. Caretto:**

Respondent takes exception to the finding (Int. Rep. p. 18) that Caretto was casually employed but has not obtained regular and substantially equivalent employment since August, 1935. Caretto testified (Tr. pps. 601-604) to various employments which he has had and which he voluntarily

*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

gave up during that period. All of those employments constituted regular employment substantially equivalent to his employment with respondent.

**37—P. C. Lytle:**

Respondent takes exception to the finding (Int. Rep. p. 19) that after the termination of the strike Lytle was refused reinstatement by respondent because he went on strike and remained on strike after July 5, 1935. There is insufficient evidence in the record to support such a finding.

Respondent takes exception to the finding (Int. Rep. p. 19) that Lytle was casually employed but has not obtained regular and substantially equivalent employment since August, 1935. Lytle testified (Tr. pps. 621-622) that in January, 1936, he became employed as a miner by the Hillside Mining Company at Hillside, Arizona, and that he was so employed continuously for a period of five and one-half months, at the end of which time he voluntarily quit the job. Lytle further testified (Tr. pps. 622-623) that in February, 1937, he went to work at the Shattuck Mine in Bisbee, Arizona, and continued in such employment until June of 1937. Lytle further testified (Tr. pps. 623-624) that in September, 1937, he went to work as a timberman for the Sullivan Mining Company in Idaho, and that after working at that employment for a month and a half he voluntarily quit the job. Lytle also testified (Tr. pps. 626-627) that in January, 1937, he went to work for the Bagdad Copper Company at Bagdad, Arizona, as a timberman and that after working eight days in that employment he voluntarily quit the job.

**41—Leonard Guess:**

Respondent takes exception to the finding (Int. Rep. p. 20) that after the termination of the strike Guess applied to respondent for employment but was refused because of his Union membership. Such finding is not supported by the evidence.



*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

**42—Frank Peterson:**

Respondent takes exception to the finding (Int. Rep. p. 21) that Peterson was casually employed but has not obtained regular and substantially equivalent employment since August, 1935. Peterson testified (Tr. pps. 697-703) to various employment which he has had during that period and which constitute regular employment substantially equivalent to his employment with respondent.

**43—H. D. Edge:**

Respondent takes exception to the finding (Int. Rep. p. 21) that Edge was casually employed but has not obtained regular and substantially equivalent employment since August, 1935. Edge testified (Tr. pps. 710-711) that in June, 1936, he went to work as a miner with the Climax Molybdenum Mining Company at Climax, Colorado, and that after working eleven shifts for that company he voluntarily quit the job. Edge further testified (Tr. pps. 712-713) that from October, 1936, until April, 1937, he was continuously employed as a miner by a Joe Colford in Bisbee, Arizona.

Respondent takes exception to the finding (Int. Rep. p. 22) that the individuals therein listed "were employees of respondent on July 5, 1935, and remained employees of respondent at all times herein referred to thereafter". Such a finding is not supported by the evidence. With reference to the name of John Patrick Foley respondent again refers to the finding (Int. Rep. p. 8) that Foley was not an employee of the respondent.

Respondent takes exception to the finding (Int. Rep. p. 22) to the effect that on August 9, 1935, and again on August 23, 1935, the individuals therein listed were refused employment by respondent because they had engaged in union activities. Such a finding is not supported by the evidence.

*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

Respondent takes exception to the finding (Int. Rep. pps. 22-23) that by its refusal to employ the individuals therein listed respondent has "interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act." Such a finding is not supported by the evidence.

Respondent takes exception to the finding (Int. Rep. p. 23) that by its refusal to employ the individuals therein listed respondent has discouraged membership in a labor organization. Such a finding is not supported by the evidence.

### III.—INTERSTATE COMMERCE.

Respondent takes exception to the finding (Int. Rep. p. 24) that it normally employed approximately 1,000 men at its Copper Queen Branch, Mines Division. The evidence shows that in June, 1935, respondent had in its employ approximately 950 individuals.

Respondent takes exception to the finding (Int. Rep. p. 25) "that the activities of the Respondent as set forth in Section II occurring in connection with the operations of Respondent as set forth in Sections I and III have a close, intimate and substantial relation to trade, traffic and commerce among the several states and have led and tend to lead to labor disputes burdening commerce and the free flow of commerce". Such a finding is not supported by the evidence.

### D.—CONCLUSIONS AND RECOMMENDATIONS.

Respondent takes exception to the following determinations and conclusions made by the Trial Examiner under the foregoing heading (Int. Rep. p. 25):

1. Respondent excepts to the failure to include the name of John Patrick Foley in the conclusion that the allegations in the complaint should be dismissed as to William

*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

Daugherty, Vernon Dell Curtis, Grover Cornett, Richard Johnson and Leonard Guess. The Trial Examiner has made a recommendation of dismissal as to John Patrick Foley (Int. Rep. p. 8).

2. Respondent takes exception to the conclusion of the Trial Examiner (Int. Rep. p. 25) that by refusing to reinstate to their former positions the individuals named therein respondent "has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, sub-division (1) and Section 2, sub-divisions (6) and (7) of the National Labor Relations Act." Such a conclusion is not supported by the evidence and is contrary to law.

3. Respondent takes exception to the conclusion (Int. Rep. p. 26) that by refusing to reinstate to their former positions the individuals therein listed respondent "has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, sub-division (3) and Section 2, sub-divisions (6) and (7) of the National Labor Relations Act." Such conclusion is not supported by the evidence and is contrary to law.

Respondent takes exception to the recommendations made by the Trial Examiner (Int. Rep. pps. 26-28).

1. Respondent takes exception to the recommendation that it cease and desist from the acts set forth in paragraph 1 (Int. Rep. p. 26) for the reason that there is insufficient evidence to establish that respondent ever has or is now engaged in such acts.

2. Respondent takes exception to the recommendation that it cease and desist from the act set forth in paragraph 2 (Int. Rep. p. 26) for the reason that there is insufficient evidence to establish that respondent ever has or is now engaged in such act.



*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

3 (a). Respondent takes exception to the recommendation set forth in paragraph 3 (a) (Int. Rep. pp. 26-27) that it offer reinstatement to the individuals therein listed for the reasons and upon the grounds following:

(a) The evidence shows that W. M. Day, Levi Crandall and John Patrick Foley were not employees of respondent on, immediately prior to, or at any time subsequent to June 10, 1935, and it follows, therefore, that they are not employees of respondent under the definition of the term "employee" contained in Section 2 (3) of the National Labor Relations Act which became effective on July 5, 1935.

(b) With respect to John Patrick Foley the Trial Examiner has made a finding (Int. Rep. p. 8) in which it is recommended that the case be dismissed as to this person.

(c) In the case of Milton Wynn the evidence is clear to the effect that Wynn was not a member of the Union either at the time of the alleged discrimination or at the time of the walk out on June 10, 1935; that he was not in the picket line at that time; that respondent had no reason to believe that he was a member of the Union at any time; that he has not made application for employment at any time subsequent to July 5, 1935; that he has not been refused employment at any time subsequent to July 5, 1935, and that respondent's failure to employ him was not the result of his membership in the Union or of his having engaged in Union activities.

(d) With respect to H. D. Edge and J. M. Morris, the evidence is clear to the effect that these individuals are unemployable (Tr. pp. 711-712 and p. 659).

(e) With respect to H. J. Montgomery the evidence is clear to the effect that the alleged failure or refusal to "reinstate" Montgomery was based upon, and was fully justified by, his unsatisfactory service record (testimony of A. C. Reifsnider, Tr. pp. 882-892).

*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

(f) None of the persons listed was on July 5, 1935, or has been at any time since that date, an "employee" of respondent as defined in Section 2 (3) of the National Labor Relations Act. The evidence shows that all of these individuals, with the exception of W. M. Day and Levi Crandall, who were discharged by respondent on June 6, 1935, and John Patrick Foley, who voluntarily left the employment of respondent in January, 1935, voluntarily left the employ of respondent on June 10, 1935. It is the position of respondent that this action upon the part of these individuals constituted neither a labor dispute nor a strike. The evidence shows that no strike vote was taken in accordance with the provisions of the Constitution and By-Laws of the Union. The evidence shows that no notice of an intention to call a strike was ever given to respondent by the Union or any of its members. The evidence shows that no demands were made by the Union on respondent, the refusal of which could be construed as constituting the basis of a labor dispute between respondent and members of the Union. The evidence shows that those voluntarily leaving the employ of respondent on June 10, 1935, constituted less than 10% of the persons employed by respondent on that date. The evidence shows that prior to July 5, 1935, the places of all of those who left on June 10, 1935, had been filled and that respondent's operations were normal. In view of this evidence and upon the basis of the law as it existed prior to the effective date of the National Labor Relations Act, respondent contends that these individuals had by July 5, 1935, ceased to be employees of respondent in any sense of the word. For the same reasons respondent contends that there was no labor dispute "current" on July 5, 1935. It follows that respondent could not have engaged in an unfair labor practice with respect to any of these individuals. It is respondent's contention that any order re-

*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

quiring "reinstatement" of any of these individuals would be beyond the authority granted to the National Labor Relations Board under the terms and provisions of the National Labor Relations Act and would deny to respondent the rights guaranteed to it by the Fifth Amendment to the Constitution of the United States.

Sections 7 and 8 of the Act are confined exclusively to "employees". The rights guaranteed in Section 7 are guaranteed to "employees" only. Under Section 8 (1) it is made an unfair labor practice "to interfere with, restrain, or coerce employees" in the exercise of those rights. The labor practice defined in Section 8 (3) of the Act becomes unfair only when it operates to abridge the rights guaranteed to "employees" in Section 7. Moreover, it should be noted that there is no evidence in the record to show that the rights of any persons who actually were "employees" of respondent have been in any way abridged by the alleged refusal to "reinstate" these individuals.

Section 10 of the Act sets forth the powers of the Board with respect to the prevention of unfair labor practices and sub-section (c) of Section 10 authorizes the issuance of orders requiring a respondent "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." To construe this section as authorizing the Board to order affirmative action such as the giving of employment with or without back pay to persons other than those who are "employees" at the time such order is entered, would render the same unconstitutional and void. Such action would require the making of contracts with persons who, as far as any employment relationship is concerned, would be total strangers to the respondent, and would abridge the liberty of contract guaranteed to respondent by the Fifth Amendment to the Constitution of the United States. By the expressed wording of Section 10 (c) of the Act the Board's



*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

authority to order reinstatement is limited to cases of reinstatement of "employees."

In addition, respondent contends that any construction of the provisions of the National Labor Relations Act whereby the same would be given a retroactive effect would, as applied to the evidence in this case, constitute a denial of the due process of law guaranteed to respondent by the Fifth Amendment.

(g) The evidence shows that all of the persons listed in paragraph 3 (a), with the exception of Emory Adelbert Curtis, George Gerhardt, J. M. Morris and George Rohrer, have obtained regular and substantially equivalent employment and are, therefore, not "employees" of respondent as that term is defined in Section 2 (3) of the Act.

(h) The evidence fails to establish an unfair labor practice "affecting commerce." There is no evidence to establish, or from which it could be inferred, that the alleged unfair labor practice is "in commerce, or burdening or obstructing commerce or the free flow of commerce" or that it is such that it may be considered as "having led, or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." On the contrary, there is an abundance of testimony to the effect that respondent's alleged failure or refusal to reinstate these individuals has neither led, nor tended to lead, to such a result but, that, instead, reinstatement of these individuals would in fact lead, or tend to lead, to a dispute with the employees of respondent.

(i) The evidence fails to establish that respondent's alleged failure or refusal to "reinstate" these individuals has at any time operated to interfere with, restrain or coerce respondent's employees in the exercise of the rights guaranteed to them in Section 7 of the National Labor Relations Act. There is no evidence in the record to establish

*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

that by such alleged failure or refusal respondent has discriminated against any of its employees "in regard to hire or tenure of employment, or any term or conditions of employment", and even assuming that there is evidence of such discrimination, there is no evidence in the record to establish that the same was for the purpose of or did in fact operate to "encourage or discourage membership in any labor organization."

(j) The evidence shows that the mining operations carried on by respondent at its Copper Queen Branch, Mines Division, are entirely antecedent to commerce and do not come within the regulatory powers conferred on the Congress of the United States by Article I, Section 8 of the Constitution of the United States. Any order of the National Labor Relations Board attempting to regulate these activities of respondent would constitute a violation of the provisions of the Tenth Amendment to the Constitution of the United States.

3 (b). Respondent takes exception to the recommendation of the Trial Examiner (Int. Rep. p. 27) that respondent make whole to the persons therein named any loss in pay they may have suffered by reason of respondent's failure to employ them since August 9, 1935, for the reasons and upon the grounds following:

(a) For the reasons and upon the grounds hereinabove set forth in the exceptions to paragraph 3 (a) of the conclusions and recommendations of the Trial Examiner, all of which said reasons and grounds are hereby incorporated in and made a part of the exception to paragraph 3 (b) of said conclusions and recommendations.

(b) For the reason that none of said persons were employees of respondent on July 5, 1935, or at any time thereafter and by reason thereof are not entitled to any back pay

*Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.*

whatsoever under the provisions of Section 10 (c) of the National Labor Relations Act.

(c) For the reason that all of said persons, with the exception of Emory Adelbert Curtis, George Gerhardt, J. M. Morris and George Bohrer, subsequent to July 5, 1935, and prior to the date of the hearing, obtained other regular employment substantially equivalent to employment by respondent and by reason thereof were not employees of respondent at the date of the hearing or at any time subsequent thereto and are not entitled to any back pay whatsoever under the provisions of Section 10 (c) of the National Labor Relations Act.

(d) For the reason that none of said persons applied to respondent for employment on August 9, 1935, but instead were engaged in picketing respondent's property on said date and until August 24, 1935; that according to the evidence the places and positions in the employ of respondent formerly held by said persons had been filled prior to July 5, 1935, by others and that the respondent's operations prior to July 5, 1935, were normal in all respects; that there is no evidence to the effect that on August 9, 1935, or at any time thereafter, respondent had available places or positions for which said persons could have been employed.

(e) For the reason that under the provisions of Section 10 (c) of the National Labor Relations Act back pay may be ordered only as an incident to reinstatement of employees. None of said persons were employees of respondent on or after July 5, 1935, or at the date of the hearing and are therefore not entitled to reinstatement, and by reason of such facts are not entitled to back pay.

(f) For the reason that said recommendation does not operate to prevent any unfair labor practice affecting commerce or otherwise effectuate the policies of the Act, but,



***Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.***

instead, operates to impose a penalty upon said respondent and deprives respondent of its property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

3 (c). Respondent takes exception to the recommendation set forth in paragraph 3 (c) (Int. Rep. pps. 27-28) that it post notices as specified therein for the reason that the evidence fails to establish that respondent has ever or is now engaged in any unfair labor practice as defined in the National Labor Relations Act.

Respectfully submitted,

**ELLINWOOD & ROSS  
WILLIAM A. EVANS  
DENISON KITCHEL  
Attorneys for Respondent**

**ELLINWOOD & ROSS  
WILLIAM A. EVANS  
DENISON KITCHEL**

**807 Title & Trust Bldg.  
Phoenix, Arizona**

**Attorneys for Respondent**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

IN THE MATTER OF  
PHELPS DODGE CORPORATION, a corpo-  
ration,  
and  
INTERNATIONAL UNION OF MINE, MILL,  
and SMELTER WORKERS, LOCAL No. 30.

CASE No.  
XXI-C-266

**Respondent's Request for Permission to File Brief  
And for Oral Argument.**

Respondent, Phelps Dodge Corporation, having filed herein its Statement of Exceptions To The Record and to the Intermediate Report and Rulings Of The Trial Examiner, hereby respectfully petitions the National Labor Relations Board for permission to file a brief and to present oral argument before the Board in support of such Statement and respondent's contentions in the above-entitled case, and that an order be entered giving respondent thirty days from the date hereof within which to file such brief and fixing a date for the presentation of such oral argument, all in pursuance of Section 36, Article II, Series 1, as amended, of the Rules and Regulations of the National Labor Relations Board.

Dated this 1st day of April, 1938.

Respectfully submitted,

/s/ ELLINWOOD & ROSS,  
/s/ WILLIAM A. EVANS,  
/s/ DENISON KITCHEL,  
Attorneys for Respondent.

Ellinwood & Ross,  
William A. Evans,  
Denison Kitchel,  
807 Title & Trust Building,  
Phoenix, Arizona.



## NATIONAL LABOR RELATIONS BOARD

WASHINGTON, D. C.

IN THE MATTER OF  
 PHELPS DODGE CORPORATION, a corpo-  
 ration,

and

INTERNATIONAL UNION OF MINE, MILL,  
 and SMELTER WORKERS, LOCAL No. 30.

Case No.

C-500

## Notice of Hearing.

PLEASE TAKE NOTICE that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Thursday, May 5, 1938, at 8 o'clock p. m. in Room 326, Shoreham Building, Fifteenth and H. Streets, N.W., Washington, D. C., for the purpose of oral argument in the above entitled matter. Argument will be limited to one-half hour, and you are hereby advised that in view of the Board's docket no request for additional time made at the hearing, will be granted.

You may appear and be heard if you so desire.

Dated, Washington, D. C., April 5, 1938.

BEATRICE M. STERN,

BEATRICE M. STERN,  
 Assistant Secretary.

(SEAL)



UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

IN THE MATTER OF  
PHELPS DODGE CORPORATION, a corpo-  
ration,

and

INTERNATIONAL UNION OF MINE, MILL,  
and SMELTER WORKERS, LOCAL No. 30.

Case No.

C-500

**Appearances at Hearing.**

Room 442,  
Shoreham Building,  
Washington, D. C.

A hearing was held in the above matter for the purpose of ORAL ARGUMENT at the above place on May 5, 1938 at 2:00 P. M.

**Before:**

J. Warren Madden, Chairman

Donald Wakefield Smith, Member

**Appearances:**

Sumner Marcus, of Counsel to the Board

Denison Kitchel, for the Company

Phoenix, Arizona

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
TWENTY-FIRST REGION

IN THE MATTER OF  
PHELPS DODGE CORPORATION, a corpo-  
ration,  
and  
INTERNATIONAL UNION OF MINE, MILL,  
and SMELTER WORKERS, LOCAL No. 30.

CASE No.  
XXI-C-266

**Stipulation.**

The National Labor Relations Board, acting pursuant to Section 36, Article II, Series 1, of its own Rules and Regulations, as amended, having requested of respondent the furnishing of additional evidence in the above entitled case,

IT IS HEREBY STIPULATED by and between William R. Walsh, attorney for the National Labor Relations Board, and Ellinwood & Ross and Denison Kitchel, attorneys for respondent, that the following contains a true and correct statement of the facts so requested by the National Labor Relations Board.

**I.**

**NUMBER ON THE PAYROLL AUGUST 9, 1935.**

On August 9, 1935 there were 1,012 persons on the payroll of the Copper Queen Branch, Mines Division.

**II.**

**INDIVIDUALS HIRED BETWEEN AUGUST 9, 1935, AND  
JANUARY 27TH, 1936.**

There is attached hereto, marked Exhibit A and made a part hereof, a list containing the name, date hired, occupation for which hired, and the date last worked in previous



*Stipulation.*

service, if any, of each and every person employed or re-employed by respondent at its Copper Queen Branch, Mines Division, from August 9, 1935, to January 27, 1938.

## III.

INDIVIDUALS LEAVING RESPONDENT'S EMPLOY BETWEEN  
AUGUST 9, 1935, AND JANUARY 27, 1938.

There is attached hereto, marked Exhibit B and made a part hereof, a list containing the name, date dropped from the payroll, date on which last hired, and occupation at time of leaving respondent's employ, of each and every person leaving respondent's employ for any reason at its Copper Queen Branch, Mines Division, from August 9, 1935, to January 27, 1938.

## IV.

RECAPITULATION OF PAYROLL FLUCTUATIONS FROM AUGUST 9,  
1935, TO JANUARY 27, 1938.

Month		Number Hired	Number Leaving the Service
August, 1935	(from 9th on)	24	69
September	"	35	53
October	"	56	23
November	"	27	11
December	"	27	16
January, 1936		63	22
February	"	31	21
March	"	45	16
April	"	56	24
May	"	95	18
June	"	45	35
July	"	74	36
August	"	112	44
September	"	132	67
October	"	78	42
November	"	70	36
December	"	75	30



**Stipulation.**

<i>Month</i>	<i>Number Hired</i>	<i>Number Leaving the Service</i>
January, 1937 .....	145	75
February " .....	144	66
March " .....	127	53
April " .....	146	57
May " .....	166	59
June " .....	146	62
July " .....	68	61
August " .....	109	85
September " .....	87	137
October " .....	22	370
November " .....	19	82
December " .....	9	186
January, 1938 (to 27th) .....	16	36
<b>Totals</b> .....	<b>2249</b>	<b>1891</b>

IT IS FURTHER STIPULATED AND AGREED that this stipulation and the facts herein contained shall be incorporated in and become a part of the record in this case just as if the same had been offered and admitted as evidence in the course of the hearing before the Trial Examiner, it being mutually understood and agreed, however, that this stipulation and the facts herein contained are subject to all of the motions to dismiss and statements of exceptions made by respondent from the time of the commencement of these proceedings to and including the date hereof, all of said motions and statements being hereby renewed by respondent.

DATED this 11th day of January, 1939.

NATIONAL LABOR RELATIONS BOARD

W.M. R. WALSH

Attorney

PHILIPS DODGE CORPORATION

ELLINWOOD & ROSS

DAVIDSON KITCHEL

Attorneys

## Exhibit "A."

## PHELPS DODGE CORPORATION

## COPPER QUEEN BRANCH, MINES DIVISION.

Name and Date of Employment of Each and Every Person Employed or Re-employed by Phelps Dodge Corporation, Cooper Queen Branch, Mines Division, From August 9, 1935 to January 27, 1938.

Date Hired	Name	Occupation	If had previous service: Last day worked
8/9/35	Elbert Forrest	Mucker	
8/9/35	E. L. Hardy	Mucker	
8/11/35	J. A. Hamilton	Diamond drill helper	
8/12/35	William Barrow	Miner	
8/14/35	T. M. Osuna	Mucker	
8/14/35	D. A. Daugherty	Mucker	
8/14/35	Raymond Gregg	Miner	
8/14/35	D. L. Garcia	Miner	
8/14/35	M. W. McPherson	Miner	3/11/29
8/16/35	W. T. Wright	Miner	12/31/31
8/18/35	G. G. Trent	Mucker	
8/18/35	R. O. Allen	Miner	1/14/32
8/19/35	K. N. Webb	Mucker	
8/19/35	L. B. Williams	Mucker	
8/19/35	H. V. Hairston	Mucker	
8/19/35	W. S. Kitt	Physician	
8/19/35	Irvin Western	Miner	11/14/27
8/20/35	J. T. Toland	Miner	12/31/29
8/21/35	W. E. Simpson	Mucker	
8/21/35	I. E. Newton	Mucker	
8/21/35	C. F. Davenport	Mucker	
8/22/35	W. H. Crane	Miner	12/18/28
8/24/35	J. E. Massie	Mucker	7/1/35
8/29/35	J. F. Bartoach	Miner	8/26/30
8/3/35	H. C. Johnson	Miner	6/10/35
8/3/35	Henry Costley, Sr.	Miner	8/1/35
8/4/35	J. C. Rogers	Electrician helper	9/13/29
8/9/35	W. E. A. McElwain	Mucker	
9/9/35	G. R. Beal	Miner	9/4/24
9/9/35	R. J. Whelan	Mucker	7/17/30
9/9/35	F. R. Williams	Miner	8/15/35
9/11/35	Caroline Nixon	Nurse	5/25/32
9/18/35	E. R. Pierce	Mucker	
9/23/35	L. R. Cowderoy	Clerk	1/31/30
9/23/35	Roy Brooks	Miner	12/12/31
9/23/35	D. W. Newport	Mucker	
9/23/35	R. H. Shelton	Mucker	
9/23/35	Orville Tyra	Mucker	
9/23/35	R. L. Simpson	Mucker	
9/23/35	J. R. Winters	Miner	3/8/27
9/23/35	Tom Hargis	Mucker	3/17/22
9/23/35	L. E. Henderson	Miner	8/16/30
9/24/35	J. E. Mertaugh	Mucker	
9/24/35	P. L. Cooley	Mucker	
9/24/35	John Jos. Ryan	Mucker	

\* Appears before each name which has been listed more than once.



*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous service Last day worked</i>
9/24/35	J. C. Hancock	Mucker	
9/24/35	Jim Vercellino	Mucker	3/1/30
9/25/35	H. B. McDaniel	Mucker	
9/25/35	A. V. Barrett	Mucker	4/6/29
9/25/35	Earl Herbert	Miner	11/19/28
9/27/35	W. D. Hunt	Mucker	
9/25/35	Clemens Buscher	Mucker	3/30/30
9/27/35	P. H. Varner	Mucker	
9/27/35	B. O. Simmonds	Mucker	
9/27/35	Monroe McClintock	Mucker	
9/27/35	J. O. Shelton	Mucker	
9/27/35	R. W. Nichols	Mucker	
9/27/35	W. R. Buttler	Mucker	
9/27/35	J. L. Berryhill	Mucker	2/19/30
10/1/35	R. L. Whitlow	Mucker	
10/2/35	J. O. Cooley	Mucker	
10/1/35	R. C. Mielke	Mucker	
10/1/35	H. J. Brown	Mucker	
10/1/35	L. F. Tschirhart	Mucker	
10/1/35	R. L. Patton	Mucker	
10/3/35	H. T. Roberts	Mucker	
10/3/35	J. J. Eggleston	Miner	
10/3/35	H. L. Williams	Mucker	
10/1/35	T. L. Kester	Mucker	
10/1/35	Arthur Detloff, Jr.	Mucker	9/30/30
10/1/35	L. L. Davis	Miner	7/7/34
10/1/35	R. E. Eastham	Miner	8/13/35
10/2/35	D. P. Faulconer	Miner	9/2/27
10/1/35	L. V. Trammell	Mucker	
10/1/35	J. M. Ryan	Mucker	12/12/27
10/3/35	E. W. Butler	Mucker	4/26/30
10/3/35	Raymond Pernel	Mucker	2/19/30
10/3/35	J. P. Coughlin	Miner	
10/3/35	Lloyd J. Lemon	Miner	
10/4/35	Ben F. Johns	Mucker	
10/4/35	L. M. Gurnett	Mucker	
10/4/35	R. O. Hockman	Mucker	
10/4/35	R. W. Kinchloe	Miner	10/1/35
10/4/35	W. M. Taylor	Mucker	
10/10/35	J. S. Barker	Mucker	
10/10/35	Edward J. Phillips	Mucker	
10/10/35	W. A. Poe	Mucker	
10/10/35	C. W. Hale	Miner	
10/12/35	Kroger C. Moon	Mucker	
10/12/35	Harrie B. Stewart	Mucker	
10/12/35	Oscar E. Rushin	Mucker	
10/12/35	C. A. O'Brien	Mucker	
10/12/35	W. J. Hicks	Mucker	12/31/28
10/12/35	James Simpson	Mucker	8/22/29
10/17/35	L. L. Phelps	Mucker	
10/17/35	O. G. Cates	Mucker	
10/17/35	P. S. H. Moore	Mucker	
10/17/35	Edward F. Gaetthje	Mucker	
10/17/35	A. A. Musgrave	Mucker	
10/17/35	J. D. Ralph	Mucker	
10/17/35	F. V. Harris	Mucker	3/23/28



*Exhibit A, Attached to Stipulation.*

Date Hired	Name	Occupation	If had previous service: Last day worked
10/17/35	L. E. Kirby	Miner	8/5/31
10/16/35	J. C. Chapman	Draftsman	
10/22/35	C. F. Shields	Mucker	
10/22/35	W. A. F. Pollock	Mucker	
10/22/35	Pete J. Hewlett	Miner	4/30/30
10/22/35	Roge Q. Hewlett	Miner	4/30/35
10/23/35	Chas. N. Attaway	Mucker	
10/26/35	C. R. Stevens	Mucker	
10/26/35	W. D. Darter	Mucker	
10/26/35	Martin J. Dodge	Mucker	
10/26/35	S. W. Coons	Mucker	
10/26/35	H. C. Reabold	Mucker	
10/26/35	Robert Phipps	Mucker	4/24/30
10/31/35	W. G. Smith	Mucker	
11/2/35	W. A. Parkin	Mucker	
11/2/35	E. L. Renner	Mucker	
11/2/35	Tony A. Silva	Mucker	
11/2/35	Ray Loper	Mucker	
11/2/35	Everett C. Lytle	Miner	9/20/30
11/2/35	R. R. Rawley	Mucker	11/16/32
11/13/35	Albert C. Hansen	Mucker	
11/13/35	G. L. Brady	Mucker	
11/13/35	J. L. Hedgecock	Mucker	
11/13/35	D. T. Hunt	Mucker	7/30/30
11/13/35	P. M. Whelan	Mucker	
11/13/35	Oliver Johnson	Miner	8/7/31
11/13/35	E. W. Johnson	Mucker	10/31/35
11/15/35	F. E. Williams	Mucker	12/11/29
11/16/35	J. T. Diffie	Mucker	
11/16/35	L. S. Mosier	Mucker	
11/16/35	W. J. Winiarski	Mucker	
11/2/35	Pearl A. Wilcox	Librarian	
11/23/35	Harry L. Kope	Elec. Helper	
11/23/35	L. S. Armstrong	Mucker	
11/23/35	H. F. Gaethje	Mucker	
11/23/35	Hilary Page	Mucker	
11/23/35	H. T. Coons	Mucker	
11/23/35	J. J. Cowling	Mucker	
11/23/35	D. J. Reed	Miner	8/8/31
11/1/35	Mrs. J. E. Jordan	Nurse	
11/16/35	Caroline Nixon	Nurse	
12/5/25	W. A. Stevens	Mucker	
12/5/35	Roy Kading	Mucker	
12/5/35	J. D. Fowler	Mucker	
12/5/35	W. A. Jones	Miner	10/23/20
12/5/35	Fount Reed	Mucker	2/14/30
12/5/35	Howard Dennison	Mucker	5/1/35
12/4/35	G. M. Harrelson	Miner	4/16/33
12/13/35	Frank Kasun	Mucker	
12/11/35	L. A. Scheffler	Mucker	
12/13/35	J. F. Gray	Miner	11/27/29
12/13/35	E. J. Frank	Mucker	9/4/29
12/11/35	A. A. Sabin	Miner	4/6/27
12/13/35	R. R. Hall	Mucker	
12/17/35	W. T. Bendixen	Mucker	
12/17/35	B. G. Benton	Mucker	

*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous service Last day worked</i>
12/17/35	J. D. Grant	Mucker	
12/17/35	J. A. Lemon	Mucker	
12/18/35	G. H. Miller	Mucker	
12/18/35	E. G. Rodriguez	Miner	
12/17/35	L. C. Smith	Miner	9/31/29
12/16/35	C. C. Glasscock	Mucker	4/30/30
12/16/35	J. O. Richins	Miner	12/9/29
12/17/35	I. W. Rhoads	Mucker	3/31/35
12/17/35	A. S. Ham	Miner	9/24/31
12/17/35	L. E. Harris	Miner	1/4/30
12/15/35	*Caroline Nixon	Nurse	11/30/35
12/30/35	*J. P. Coughlin	Miner	12/6/35
1/2/36	C. J. Short	Mucker	
1/2/36	T. W. Massie	Mucker	
1/3/36	J. P. Sturdivant	Miner	
1/3/36	*W. G. Smith	Mucker	11/30/35
1/2/36	Herbert Gartin	Miner	10/12/35
1/2/36	R. E. Martyr	Mucker	8/30/35
1/3/36	Alvin Carter	Mucker	10/8/30
1/3/36	J. W. Kerwin	Mucker	11/15/32
1/3/36	A. W. Knowles	Mucker	1/23/30
1/4/36	Voris Page	Mucker	
1/4/36	G. I. Richman	Mucker	
1/7/36	V. F. Wojcik	Mucker	
1/7/36	N. L. French	Mucker	
1/7/36	G. L. Weatherford	Mucker	
1/4/36	C. W. Hicks	Mucker	
1/4/36	Edward Key	Miner	
1/7/36	D. I. Stutzman	Mucker	3/17/26
1/7/36	Lonnie Cloud	Miner	4/30/30
1/7/36	L. L. Kuder	Mucker	
1/7/36	J. F. Johnson	Mucker	2/28/31
1/4/36	J. L. Wootan	Miner	5/8/29
1/4/36	R. T. Parker	Miner	10/21/30
1/7/36	E. L. Hawkins	Miner	
1/8/36	G. E. Gipson	Miner	1/3/36
1/11/36	R. L. Jett, Jr.	Mucker	
1/9/36	P. W. Kincheloe	Mucker	
1/9/36	C. W. Carpenter	Mucker	
1/9/36	J. H. Daves	Miner	
1/9/36	M. K. Jean	Mucker	
1/11/36	M. T. Winters	Mucker	
1/11/36	E. M. Childress	Mucker	
1/11/36	T. H. Voelker	Mucker	
1/1/36	C. W. Hull	Mucker	
1/9/36	H. E. Carter	Mucker	
1/9/36	L. V. Hill	Mucker	9/17/28
1/9/36	C. J. Russell	Miner	7/17/30
1/8/36	J. A. McRae	Mucker	4/26/30
1/10/36	George Hawn	Miner	5/29/31
1/11/36	E. G. Craig	Mucker	
1/11/36	Dave Smith	Mucker	
1/10/36	H. A. Petsche	Mucker	
1/11/36	Woodrow Loper	Mucker	
1/11/36	Gordon Hodges	Mucker	3/3/27
1/11/36	Westley Daniel	Mucker	10/30/29



*Exhibit A, Attached to Stipulation.*

Date Hired	Name	Occupation	If had previous service: Last day worked
1/13/36	C. J. Kuhlmeier	Mucker	12/14/35
1/17/36	W. H. Solomon	Mucker	
1/11/36	A. E. Dunham	Mucker	
1/11/36	W. J. Johnson	Mucker	
1/13/36	Kermit Grafton	Hospital orderly	
1/13/36	Dr. F. A. Obrock	Physician	
1/21/36	Hugh Balke	Miner	
1/21/36	G. J. Baranic	Miner	
1/21/36	J. E. Wall	Miner	
1/21/36	C. L. Greenwall	Mucker	
1/20/36	W. R. Graham	Mucker	
1/20/36	Pete Ivanovich, Sr.	Miner	
1/21/36	Lee R. Burrow	Miner	
1/21/36	B. F. Waller	Miner	
1/16/36	Margaret Spaulding	Hotel maid	
1/16/36	Doris Norberg	Hospital nurse	
1/31/36	Mrs. J. E. Harris	Hotel maid	
1/16/36	Mrs. P. E. Andrews	Hospital nurse	
2/1/36	E. R. Bryant	Miner	
2/13/36	J. M. Kleiner	Miner	
2/21/36	T. J. Salmon	Miner	
2/15/36	J. L. Brittain	Mucker	
2/16/36	*W. R. Withington	Mucker	
2/13/36	W. G. Henwood	Miner	
2/16/36	L. M. Berry	Mucker	
2/16/36	Daniel G. Zigler	Mucker	
2/14/36	Lenore Norberg	Hospital nurse	
2/13/36	L. F. Miller	Miner	
2/13/36	A. M. Thompson	Miner	6/24/26
2/13/36	Earl Peterson	Miner	6/18/27
2/13/36	J. L. McNeil	Miner	
2/13/36	C. W. Shay	Miner	
2/18/36	J. A. Windham	Mucker	
2/16/36	W. C. Hobgood	Mucker	
2/18/36	A. T. Anderson	Mucker	
2/18/36	Preston Stidham	Mucker	
2/18/36	J. D. Jenkins	Mucker	
2/18/36	H. P. Jacoby	Mucker	
2/18/36	S. D. Bates	Mucker	12/19/17
2/18/36	H. L. Martin	Miner	
2/22/36	L. F. Meyer	Miner	
2/22/36	R. B. McCoy	Miner	
2/22/36	J. S. Brown	Mucker	
2/22/36	J. H. Cain	Miner	6/27/28
2/22/36	Antonio de la Torre	Miner	
2/22/36	Jack Bostwick	Miner	1/8/29
2/15/36	Clarence F. Morrison	Mucker	
2/26/36	H. R. Kees	Miner	
2/26/36	C. W. Flinn	Miner	
2/26/36	J. V. Dye	Miner	
3/2/36	G. O. Bergstrom	Mucker	
3/2/36	C. M. Morris	Miner	
3/3/36	L. A. Hartley	Miner	
3/2/36	R. M. Furr	Mucker	
3/2/36	R. C. Herrell	Miner	1/6/26
3/5/36	J. W. Wilson	Mucker	



*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous service Last day worked</i>
3/5/36	E. M. Willbanks	Mucker	
3/5/36	R. I. Woodworth	Mucker	
3/5/36	A. P. Jenkins	Mucker	
3/5/36	Earl Wootan	Mucker	
3/5/36	Alex Henderson	Mucker	
3/2/36	W. A. Floyd	Miner	10/21/35
3/5/36	Raymond James	Mucker	1/20/30
3/10/36	W. J. Barr	Miner	
3/10/36	I. H. Parten	Mucker	
3/5/36	Bill L. Gamel	Mucker	
3/10/36	H. S. Robbins	Mucker	
3/11/38	A. A. Carlton	Electrician	
3/10/36	C. K. Schmidt	Mucker	
3/10/36	H. A. Hall	3/10/36	2/24/36
3/12/36	P. L. Harris	Mucker	
3/12/36	R. L. Hoffman	Mucker	
3/12/36	Carl Henderson	Miner	
3/12/36	A. A. Williams	Mucker	
3/12/36	A. F. Jobe	Mucker	
3/12/36	R. H. Hawkins	Mucker	
3/12/36	W. F. McNelis	Hotel clerk	
3/17/36	E. T. Allen	Mucker	
3/17/36	C. E. Hamilton	Mucker	
3/17/36	D. C. Kading	Mucker	
3/24/36	Claude Hampton	Miner	
3/24/36	Bid Abraham	Miner	
3/24/36	H. H. Johnson	Miner	4/30/30
3/24/36	E. R. Brittain	Miner	1/25/30
3/31/26	G. W. Kaske	Miner	10/14/23
3/31/26	E. E. Harris	Mucker	
3/31/26	H. R. Aten	Mucker	
3/31/36	L. C. Hall	Mucker	
3/31/36	Delbert DeFreece	Mucker	
3/31/36	Deck Chandler	Hospital orderly	
3/23/36	Keith Estes	Dispensary clerk	8/30/35
3/5/36	Mrs. E. C. Hill	Hospital nurse	
3/28/36	Mrs. Jewell Lee	Hospital nurse	
3/31/36	E. T. Eckel	Miner	
3/31/36	W. D. Kirland	Mucker	
4/2/36	T. C. Millican	Boilermaker helper	3/4/36
4/2/36	Woodrow Harris	Mucker	
4/7/36	M. A. Bonham, Jr.	Mucker	
4/7/36	W. M. Green	Mucker	
4/7/36	Willie Paken	Mucker	
4/3/36	R. F. White	Miner	6/1/35
4/9/36	H. M. Polley	Mucker	
4/9/36	P. F. Brown	Mucker	
4/9/36	W. J. Kasun	Mucker	
4/10/36	Andreas de Leon	Laborer	
4/13/36	P. L. Keller	Electrician	
4/9/36	M. E. Haggard	Mucker	8/30/30
4/13/36	Alejandro Ballesteros	Laborer	1/3/29
4/13/36	Alberto Burrola	Laborer	1/16/34
4/13/36	Jesus Ruiz	Laborer	3/9/31
4/15/36	Tim Holland	Miner	
4/15/36	Oscar Hollan	Miner	

*Exhibit A, Attached to Stipulation.*

Date Hired	Name	Occupation	If had previous service: Last day worked
4/15/36	R. R. Garcia	Laborer	3/12/29
4/16/35	J. I. Garcia	Laborer	11/30/36
4/13/36	Macario Luque	Laborer	8/1/35
4/13/36	*Mrs. J. E. Jordan	Hospital nurse	
4/18/36	J. T. Wilson	Mucker	
4/16/36	F. B. Moson, Jr.	Mucker	
4/16/36	L. W. Warner	Mucker	
4/16/36	C. H. Johnston	Mucker	
4/18/36	H. E. Bergman	Mucker	
4/18/36	O. D. Dierking	Mucker	
4/17/36	C. A. G. Rhodes	Mucker	
4/18/36	L. E. Riggins	Mucker	
4/21/36	J. H. Jett	Mucker	
4/21/36	W. R. Brown	Mucker	
4/21/36	E. V. Martin	Mucker	
4/21/36	J. A. Dodge, Jr.	Mucker	
4/20/36	A. L. Mills, Jr.	Car repair helper	
4/16/36	W. B. Beam	Mucker	12/15/52
4/18/36	C. R. Gandy	Mucker	
4/20/36	*C. W. Carpenter	Mucker	2/29/36
4/20/36	D. R. Jeffrey	Electrician	11/4/21
4/25/36	D. O. Ladd	Mucker	
4/22/36	F. M. Hickman	Machinist	
4/25/36	G. A. Looman	Miner	9/15/35
4/17/36	Clifford Bailey	Janitor	
4/28/36	Roy O'Leary	Mucker	
4/28/36	P. H. Bertrand	Mucker	
4/28/36	Edward Johnson	Mucker	
4/30/36	E. S. House	Mucker	
4/28/36	H. E. Blanchard	Mucker	
4/29/36	D. M. Hurst	Mucker	
4/30/36	Herschel Fowler	Mucker	
4/27/36	D. G. Thorne	Electrician	
4/26/36	Harold Webster	Miner	3/4/27
4/28/36	W. E. Haygood	Mucker	2/28/30
4/28/36	V. R. Poulter	Mucker	
4/30/38	Mrs. P. E. Andrews	Hospital nurse	
4/18/36	Mrs. D. E. Knowles	Hospital nurse	
4/23/36	*E. E. Estes	Dispensary clerk	
5/1/36	M. A. D'Albini	Mucker	
5/1/36	S. C. McIntosh	Mucker	
5/2/36	D. B. Hogan, Jr.	Mucker	
5/2/36	G. J. Schandelmeier	Mucker	
5/2/36	R. L. Jones	Mucker	
5/2/36	Frank Gotch	Mucker	
5/2/36	M. J. Foudy, Jr.	Mucker	
5/2/36	A. C. Melton	Mucker	
5/2/36	Jack Jennings	Mucker	
5/2/36	Billy Barnes	Mucker	4/30/30
5/2/36	Douglas Strawn	Miner	8/30/35
5/2/36	T. L. Kinney	Mucker	
5/4/36	E. B. Farnsworth	Mucker	
5/5/36	O. C. Kelly	Mucker	
5/4/36	R. N. Haynes	Mucker	
5/5/36	L. A. Aaron	Miner	
5/4/36	H. M. Goetz	Mucker	

*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous service Last day worked</i>
5/4/36	Jack A. Hill	Hotel Clerk	
5/5/36	F. A. Gray	Miner	9/30/29
5/7/36	J. M. Dunn	Mucker	
5/7/36	A. E. Kniffin	Mucker	
5/7/36	Paul Criss	Mucker	
5/9/36	Edward Matsen	Miner	
5/9/36	P. R. Brown	Mucker	
5/8/36	H. B. Kelley	Mucker	
5/9/36	F. M. Thompson	Mucker	
5/9/36	H. M. June	Mucker	
5/7/36	J. C. Oquinn	Mucker	
5/7/36	James Dearing	Mucker	
5/7/36	W. L. Benton	Mucker	
5/9/36	O. D. Haynie	Mucker	
5/9/36	R. R. McLaughlin	Mucker	
5/9/36	Lee Bragg	Miner	7/13/29
5/7/36	*A. V. Barrett	Miner	11/11/35
5/7/36	*A. C. Hansen	Mucker	1/17/36
5/12/36	*W. N. Hunt	Mucker	
5/11/36	J. M. Bowman	Mucker	
5/12/36	W. F. Slater	Miner	
5/12/36	John Plavchak	Mucker	
5/12/36	G. F. Butler	Mucker	
5/13/36	Daniel Goode	Mucker	
5/14/36	R. E. Brandt	Mucker	
5/ /36	A. P. Coons	Mucker	
5/13/36	T. A. Crutsinger	Mucker	
5/1 /36	J. P. Townsend	Mucker	
5/13/36	Charles White	Mucker	4/30/30
5/11/36	W. C. Conley	Chemist	
5/16/36	E. M. Broadus	Mucker	
5/16/36	C. T. Moore	Mucker	
5/16/36	W. M. Skaggs	Mucker	
5/16/36	W. C. Morin	Mucker	
5/16/36	D. C. Martyr	Mucker	
5/16/36	N. L. Benich	Mucker	
5/16/36	G. G. Gilman	Mucker	
5/22/36	M. O. Evans	Mucker	
5/21/36	Willis Diffie	Mucker	
5/23/36	W. L. Sholly	Miner	
5/23/36	J. E. Pickering	Mucker	
5/21/36	George Grenko, Jr.	Mucker	
5/21/36	P. K. McRae	Mucker	
5/21/36	John Mazurko	Mucker	
5/23/36	C. C. Coons	Mucker	
5/23/36	W. E. Lake	Mucker	
5/14/36	T. M. Patten	Machinist	
5/21/36	Bart Green	Mucker	2/19/30
5/22/36	James Graham	Miner	9/15/35
5/23/36	J. P. Oddonetto	Mucker	
5/13/36	Albert de la Torre	Miner	
5/21/36	T. W. Glasscock	Mucker	7/31/31
5/23/36	M. M. Carlisle	Mucker	11/7/35
5/22/36	Rosendo Garretson	Machinist	7/11/32
5/22/36	S. A. Sinclair	Electrician	9/12/30
5/26/36	*Hilary Page	Mucker	4/30/36



*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous service: Last day worked</i>
5/26/36	J. F. Kasun	Mucker	
5/26/36	W. A. Andrews	Mucker	
5/26/36	D. L. Jarvis	Mucker	
5/26/36	Steve Kroh	Mucker	
5/26/36	Van Bingham	Mucker	
5/26/36	R. F. J. Wicke	Mucker	
5/26/36	John Bendixen	Mucker	8/30/35
5/26/36	A. O. Ballard	Mucker	10/6/27
5/28/36	Constantin Apsouri	Mucker	
5/28/36	A. A. Shelton	Mucker	
5/28/36	I. N. Oliver	Mucker	
5/30/36	R. F. Hilburn	Mucker	8/16/35
5/28/36	C. D. Puckett	Mucker	
5/28/36	A. V. Childers	Mucker	
5/28/36	W. J. Knox	Miner	9/11/35
5/28/36	A. J. Ryan	Mucker	4/18/32
5/30/36	T. E. Colford, Jr.	Mucker	9/15/35
5/29/36	*W. A. Stevens	Mucker	2/27/36
5/16/36	Dr. H. W. Rice	Chief Surgeon	
5/18/36	*Pearl A. Wilcox	Librarian	11/16/35
5/28/36	*Jewell Lee	Hospital nurse	
6/2/36	M. J. Sheridan	Mucker	
6/2/36	J. C. Andreas	Mucker	
6/1/36	J. B. McPherson	Mucker	
6/1/36	G. F. A. Deshler	Mucker	
6/1/36	G. D. Allen	Mucker	
5/30/36	L. V. Hunt	Mucker	
6/2/36	John Kasun, Jr.	Mucker	
6/2/36	A. G. McClure	Mucker	
6/2/36	L. C. Clark	Mucker	
6/2/36	R. C. James	Mucker	
6/1/36	J. F. Hall	Mucker	
6/1/36	W. C. Sampson	Mucker	
6/1/36	E. D. Miller	Mucker	
6/1/36	A. J. Whelan	Mucker	
6/1/36	F. C. Alexander	Mucker	
6/1/36	E. F. Insley	Mucker	
6/2/36	Tom McGarry	Mucker	8/30/35
6/4/36	J. P. Chavez	Laborer	
6/5/36	L. M. Talbert	Mining engineer	
6/1/36	E. L. Brooks	Janitor	
6/4/36	Placido Navarro	Laborer	4/21/21
6/4/36	R. S. Lopez	Laborer	10/28/31
6/4/36	Silvano Acevas	Laborer	
6/9/36	A. W. Wigginton	Miner	
6/9/36	S. W. Miller	Miner	12/19/29
6/9/36	A. L. Taylor	Miner	
6/9/36	J. B. Dannelley	Miner	1/9/29
6/9/36	C. J. Sabin	Electrician	9/15/28
6/13/36	F. A. Parson	Mucker	
6/13/36	B. R. Adams	Mucker	
6/13/36	B. C. Romero	Laborer	
6/13/36	J. M. Carbajal	Laborer	
6/13/36	J. S. Dymock, Jr.	Mucker	9/6/35
6/13/36	G. R. Sinclair	Mucker	9/11/35
6/11/36	C. E. Cattv	Mucker	10/12/35

*Exhibit A, Attached to Stipulation.*

Date Hired	Name	Occupation	If had previous service Last day worked
6/13/36	M. A. Boss	Mucker	
6/13/36	J. W. Cameron	Mucker	9/3/35
6/13/36	Pedro Ortiz	Laborer	10/28/31
6/13/36	Carlos Gonzales	Laborer	4/6/28
6/6/36	*Mrs. Hilda Andrews	Hospital nurse	5/31/36
6/17/36	G. A. Ryance	Mucker	
6/17/36	J. E. Werner	Mucker	
6/17/36	A. A. Andress	Machinist	
6/16/36	Dr. Joseph Saba	Physician	
6/22/36	H. Z. Stuart	Mucker	
6/22/36	E. D. Crowell	Welder	
7/9/36	F. E. Baumkirchner	Mucker	
7/8/36	G. W. Phears	Mucker	
7/8/36	T. F. Perkins	Mucker	
7/8/36	V. S. Broadus	Mucker	
7/8/36	W. T. McSpadden	Mucker	
7/8/36	J. C. Wilson, Jr.	Mucker	
7/8/36	C. M. Mills	Mucker	
7/8/36	W. P. Sertic	Mucker	
7/9/36	L. C. Beecroft	Mucker	
7/9/36	E. F. Carnea, Jr.	Mucker	
7/9/36	W. J. Hill	Mucker	
7/9/36	H. C. Allen	Mucker	
7/9/36	W. C. Ryan	Mucker	
7/9/36	H. H. Hunt	Miner	
7/8/36	M. H. Taylor	Mucker	7/7/30
7/8/36	*Jim Vercellino	Mucker	3/21/36
7/9/36	W. E. Featherman	Miner	5/29/24
7/10/36	D. D. Ryan	Mucker	
7/10/36	J. D. Wright	Mucker	
7/10/36	Jerome Oliver	Mucker	
7/10/36	L. A. Goodwin	Mucker	
7/10/36	J. P. Ferry, Jr.	Mucker	
7/10/36	J. F. Riley	Mucker	
7/10/36	C. E. Vandervort	Mucker	
7/10/36	R. E. Carpenter	Mucker	
7/10/36	F. H. McCulloch	Mucker	
7/10/36	*John Lemon	Mucker	6/9/36
7/11/36	Leroy Callison	Mucker	
7/11/36	Ray Coomer	Mucker	6/9/36
7/10/36	*J. L. McNeil	Miner	6/13/36
7/14/36	J. A. Andrews	Mucker	
7/14/36	J. H. Thomas	Mucker	
7/15/36	D. F. Keeler	Mucker	
7/14/36	J. B. Douthett	Mucker	
7/15/36	Zacarias Luque, Jr.	Laborer	
7/15/36	H. E. Story	Machinist	
7/15/36	J. A. de Gomez	Mucker	8/23/34
7/15/36	Eduardo Cordova	Laborer	
7/15/36	Alejandro Urias	Laborer	6/1/29
7/21/36	R. R. Schmid	Mucker	
7/21/36	D. G. MacKinnon	Mucker	
7/21/36	H. L. Diffie	Mucker	
7/21/36	J. W. Diffie	Mucker	
7/21/36	J. P. Manning, Jr.	Mucker	
7/21/36	Jack Mardon	Miner	



**Exhibit A, Attached to Stipulation.**

Date Hired	Name	Occupation	If had previous service: Last day worked
7/21/36	W. J. Ferrell	Mucker	
7/21/36	H. L. Childress	Mucker	
7/21/36	R. V. Tate	Mucker	
7/21/36	Patrick Whelan	Mucker	
7/20/36	Ygnacio Barragon	Laborer	
7/25/36	Dominick Catero	Mucker	
7/24/36	J. R. Lewis	Boilermaker	
7/25/36	*G. L. Brady	Miner	6/9/36
7/24/36	J. M. Valenzuela	Laborer	11/5/31
7/28/36	R. E. Lee	Miner	
7/28/36	J. A. Lee	Mucker	
7/28/36	W. W. Peters	Mucker	
7/28/36	Gordon Davis	Mucker	
7/28/36	G. J. Snyder	Mucker	
7/28/36	R. E. Barackman	Mucker	
7/28/36	T. L. Townsend	Mucker	
7/28/36	Albert Sharpe	Mucker	
7/28/36	Lauren Hays	Mucker	
7/28/36	W. G. Brown	Mucker	
7/28/36	Edward Schaefer	Miner	
7/30/36	E. F. Adams	Miner	
7/30/36	Leonard Wootan	Mucker	
7/30/36	W. B. Walker	Miner	
7/30/36	*Mrs. Rosella Hill	Hospital nurse	
7/30/36	John Thompson	Miner	4/30/30
7/30/36	*Mrs. Hilda Andrews	Hospital nurse	
7/30/36	*Mrs. Jewell Lee	Hospital nurse	
7/16/36	David Vonk	Dispensary clerk	
7/28/36	Mrs. Hilda Andrews	Hospital nurse	
7/1/36	D. W. Clayton	Mucker	
7/1/36	R. A. Costey	Mucker	
7/1/36	Dominick Aira	Mucker	
7/1/36	H. J. Kimbrough	Mucker	
7/1/36	John Pajnich	Mucker	
7/1/36	Marion Ortkiese	Mucker	
7/1/36	D. D. Roberson	Mucker	
7/1/36	William Todd, Jr.	Mucker	
7/1/36	F. E. Roberson	Mucker	
7/1/36	Horace Dierking	Mucker	
7/1/36	J. D. Schandelmeier	Mucker	
7/1/36	D. L. Tyree	Mucker	
7/1/36	C. D. Sheldon	Mucker	
7/1/36	H. M. Thompson	Miner	2/6/36
7/1/36	Robert Fritz	Machinist	
7/1/36	J. O. Craig	Electrician	
7/1/36	V. O. Hardt	Mucker	
7/1/36	C. L. Riley	Mucker	
7/1/36	A. R. Moore	Mucker	
7/1/36	G. W. Bickle	Mucker	
7/1/36	D. M. Whitlow	Mucker	7/10/35
7/1/36	R. H. Kuhlmeier	Mucker	6/24/36
7/1/36	D. W. Tilton	Mucker	
7/1/36	R. D. Parker	Mucker	
7/1/36	W. A. Hayes	Mucker	
7/1/36	J. S. Hughes	Mucker	
7/1/36	J. R. Mitchell	Mucker	



*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous Last day worked</i>
8/13/36	Albert Davis	Mucker	
8/13/36	L. B. Keith	Mucker	
8/13/36	Joe Vezetti	Miner	
8/13/36	R. S. Walsh	Mucker	
8/13/36	H. L. Judd	Mucker	
8/15/36	Mike Sabo	Mucker	
8/14/36	E. L. Cooke	Mucker	
8/12/36	J. L. McDonald	Miner	6/12/36
8/13/36	R. O. Malle	Miner	
8/18/36	Fred Landers	Mucker	
8/18/36	J. E. Lillard	Mucker	
8/18/36	T. H. Wood	Mucker	
8/18/36	H. J. Tilton	Mucker	
8/18/36	R. S. Blanchard	Miner	3/22/29
8/16/36	Tom Lease	Mucker	4/30/30
8/18/36	T. L. Malone	Mucker	
8/17/36	W. T. Holt	Machinist helper	
8/20/36	L. W. Parten	Mucker	
8/20/36	V. R. Scheffler	Mucker	
8/29/36	V. A. Roberson	Mucker	
8/29/36	W. H. Phillips	Mucker	
8/20/36	R. W. Debnam	Mucker	
8/20/36	R. T. Howell	Mucker	
8/20/36	August Galigher	Miner	3/15/35
8/20/36	T. J. Kennedy	Miner	9/17/28
8/29/36	C. E. Dosa	Mucker	
8/22/36	F. P. Trezise	Mucker	
8/22/36	H. E. Krohn	Mucker	
8/22/36	W. E. Kidder	Mucker	
8/22/36	C. C. Yates	Mucker	
8/22/36	G. C. Sanders	Mucker	
8/20/36	O. R. Smith	Mucker	
8/22/36	L. J. Landureth	Mucker	
8/22/36	Pete Gilland	Mucker	
8/22/36	W. H. France	Mucker	
8/22/36	J. A. Clark	Mucker	
8/22/36	L. P. Dage	Carpenter	
8/24/36	W. G. Askew	Blacksmith helper	
8/24/36	T. L. Jordan	Blacksmith	
8/25/36	Jack Mardon	Mucker	8/20/36
8/24/36	B. L. Farnsworth	Mucker	
8/25/36	T. V. Miller	Mucker	
8/25/36	L. M. Hall	Mucker	
8/25/36	Frank Ramzinski	Mucker	
8/25/36	H. I. Staniger	Mucker	
8/25/36	Fowler Beach	Mucker	11/1/31
8/25/36	J. D. Pierce	Motorman	7/3/36
8/27/36	Robert Gresham	Mucker	
8/27/36	E. C. Greenwood	Mucker	
8/27/36	E. G. Chambers	Mucker	
8/27/36	C. W. McCollum	Mucker	
8/27/36	M. T. Breland	Mucker	
8/27/36	C. W. Weuthers	Mucker	
8/27/36	B. E. Haygood	Mucker	
8/27/36	H. F. Buntin	Mucker	
8/27/36	F. W. Younger	Mucker	

**Exhibit A, Attached to Stipulation.**

Date Hired	Name	Occupation	If had previous service: Last day worked
8/27/36	E. H. Strader	Mucker	
8/27/36	D. L. Farnsworth	Mucker	
8/27/36	J. E. Bullock	Mucker	
8/27/36	A. B. Allen	Mucker	11/1/29
8/28/36	L. H. McCormick	Miner	8/17/36
8/28/36	F. D. Bogenachutz	Miner	
8/29/36	Lawrence Seelig	Miner	
8/29/36	C. R. Nigh	Mucker	
8/29/36	W. N. Rafailovich	Mucker	
8/29/36	E. A. Randolph	Mucker	
8/29/36	B. D. Collier	Mucker	
8/29/36	T. I. Phillips	Mucker	
8/29/36	L. G. Burton	Mucker	
8/29/36	H. S. Kennedy	Mucker	
8/29/36	Bill Hensley	Mucker	
8/29/36	A. W. Frazier	Mucker	
8/29/36	J. J. Gordon	Mucker	
8/29/36	W. T. Edwards	Mucker	
8/29/36	M. W. Bowman	Mucker	
8/29/36	W. A. Graham	Mucker	
8/29/36	T. B. Noland	Miner	
8/29/36	M. R. Bigham	Mucker	
8/31/36	W. T. McSpadden	Mucker	8/29/36
8/29/36	C. W. Currier	Mucker	
8/1/36	Nellie Bird	Hotel maid	
8/17/36	H. M. Kraker	Hospital clerk	
8/20/36	Rose Bentley	Hospital nurse	
8/15/36	*Mrs. J. E. Jordan	Hospital nurse	
8/22/36	*Doris E. Knowles	Hospital nurse	
9/1/36	Jos. H. Martineau	Mucker	
9/1/36	Sidney Holder	Mucker	
9/1/36	N. J. Highfield	Mucker	
9/1/36	La Wayne Hussey	Mucker	
9/1/36	R. J. McDonald	Mucker	
9/1/36	R. F. Hobbs	Mucker	
9/1/36	Charles Brandon	Mucker	
9/1/36	Arden Rickard	Mucker	
9/1/36	L. M. Jones	Miner	1/8/25
9/1/36	A. M. Schupbach	Mucker	
9/1/36	H. S. Hatch	Miner	8/23/31
9/1/36	Clyde Davis	Mucker	
9/3/36	G. T. Modesette	Mucker	
9/3/36	Valentine Payne	Mucker	
9/3/36	Woodrow Walters	Mucker	
9/3/36	A. A. Scheffer, Jr.	Mucker	
9/3/36	M. O. Riordan	Mucker	
9/3/36	F. A. Rutledge	Mucker	
9/3/36	S. L. Fellers	Mucker	
9/3/36	Rudolph Sassoe	Mucker	
9/3/36	N. M. Benderach	Mucker	
9/3/36	R. W. Halladay	Mucker	
9/3/36	E. F. Hagins	Mucker	
9/3/36	Manuel Galaz	Laborer	
9/3/36	Ernesto Trejo	Laborer	11/14/31
9/3/36	Gilberto Chavez	Laborer	12/31/31
9/3/36	Antonio Garcia	Laborer	

*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous service Last day worked</i>
9/3/36	Enrique Torres	Laborer	
9/5/36	J. R. Hall	Mucker	3/5/30
9/5/36	Homer Burkett	Mucker	
9/5/36	Carl Hensley	Mucker	
9/5/36	J. L. Chapman	Mucker	
9/5/36	E. E. Haddix	Mucker	
9/4/36	Raymond Assmer	Laborer	
9/4/36	Arnold Carbajal	Laborer	
9/5/36	C. C. Rosson	Miner	1/25/30
9/5/36	Carmen Coronado	Laborer	10/28/31
9/9/36	W. E. Bowers	Mucker	
9/9/36	V. C. Gentner	Mucker	
9/5/36	R. W. Merkle	Mucker	
9/9/36	S. C. Merkeley	Mucker	
9/9/36	R. M. Cotton	Mucker	
9/9/36	C. E. Ham	Mucker	
9/9/36	O. L. Newbury	Mucker	8/1/35
9/9/36	L. L. Johnson	Mucker	8/31/30
9/9/36	A. C. Stuart	Miner	5/21/29
9/9/36	S. S. Foster	Mucker	4/30/30
9/10/36	Rex Loper	Mucker	
9/10/36	Bill Trezise	Mucker	
9/10/36	V. C. Johnston	Mucker	
9/10/36	F. A. Montgomery	Miner	7/18/30
9/10/36	Lester Skousen	Mucker	10/25/29
9/8/36	J. E. Schermerhorn	Clerk	
9/15/36	A. E. Curler	Mucker	
9/15/36	R. J. Cravey	Mucker	
9/15/36	Herman Ortkiese	Mucker	
9/15/36	H. M. Alexander	Mucker	
9/15/36	A. C. Jones	Mucker	
9/15/36	*W. F. Parker	Mucker	
9/15/36	H. M. Hunter	Mucker	
9/15/36	W. W. Adams	Mucker	
9/15/36	R. W. Reed	Mucker	
9/15/36	C. E. Wootan	Miner	
9/16/36	C. O. Martineau	Mucker	
9/17/36	C. F. Palmer	Mucker	
9/17/36	C. M. Zollman	Mucker	
9/17/36	F. A. Neal	Mucker	
9/17/36	Manuel Knipp	Mucker	
9/17/36	F. W. Oliver	Mucker	
9/17/36	R. D. Williamson	Mucker	
9/17/36	A. C. Jean	Mucker	
9/17/36	E. P. Donahue	Mucker	
9/17/36	H. J. Pearson	Mucker	
9/17/36	Carl Oliphant	Mucker	
9/17/36	A. K. Hill	Electrician	
9/17/36	W. A. Stubblefield	Electrician helper	
9/19/36	Marion Grenwelge	Mucker	
9/19/36	Cleo Evans	Mucker	
9/19/36	R. C. Wood	Miner	
9/19/36	M. R. Boone	Mucker	
9/19/36	J. E. H. Gray	Miner	
9/19/36	*J. L. Malone	Electrician helper	
9/19/36	A. E. Holstrom	Mucker	4/29/29



*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous service: Last day worked</i>
9/19/36	C. E. Evans	Miner	6/11/30
9/22/36	C. A. Saunders	Mucker	
9/22/36	R. E. Lowrance	Mucker	
9/22/36	A. J. Schwertner	Mucker	
9/22/36	O. S. Hulsey	Miner	
9/22/36	J. D. Whittle	Mucker	
9/22/36	Eduardo Guerra	Mucker	10/13/30
9/22/36	Armando Chavez	Laborer	
9/22/36	Juan Bernal	Laborer	
9/22/36	R. C. Martinez	Laborer	
9/22/36	F. M. Garcia	Laborer	
9/22/36	*J. P. McRae	Mucker	6/16/36
9/22/36	W. R. Williamson	Miner	
9/22/36	Francisco Lugo	Laborer	10/28/31
9/22/36	J. M. Ochoa	Laborer	9/12/30
9/24/36	H. G. Harris	Mucker	
9/24/36	G. B. Beard	Mucker	
9/24/36	H. W. Gregory	Mucker	
9/24/36	Anton Bedner	Mucker	
9/24/36	E. H. Higgins	Mucker	
9/24/36	M. R. Tovrea	Mucker	
9/24/36	C. O. Blair	Mucker	
9/24/36	W. W. Walters	Miner	2/15/29
9/24/36	Ramon Mendibles	Laborer	10/21/30
9/24/36	O. H. Porter	Miner	6/1/30
9/24/36	F. F. Kennedy	Miner	
9/24/36	Crespin Domingues	Laborer	7/26/28
9/26/36	W. F. Shields	Mucker	
9/26/36	E. G. Martin	Mucker	
9/26/36	Harry Thompson	Mucker	
9/26/36	Wayne Mayo	Mucker	
9/26/36	A. B. Linsley	Mucker	
9/26/36	Ray Jarvis	Mucker	
9/26/36	G. E. Taylor	Mucker	
9/26/36	W. L. Frazier	Miner	
9/23/36	Rafael Sonoqui	Laborer	9/30/30
9/29/36	Otto Ortkiese	Mucker	
9/29/36	H. R. Fryke	Mucker	
9/29/36	Roy Lynch	Mucker	
9/29/36	W. A. Day	Mucker	
9/29/36	Buford Armstrong	Mucker	
9/29/36	A. F. Oglesby	Mucker	
9/29/36	W. H. Johnson	Mucker	
9/29/36	C. A. Newsom	Mucker	
9/29/36	*T. L. Kester	Mucker	1/24/36
9/29/36	L. G. Stacey	Miner	6/9/27
9/29/36	A. J. Holland	Miner	
9/15/36	Lucille Bird	Hospital nurse	
9/26/36	*Hilda Andrews	Hospital nurse	
10/1/36	L. V. Reed	Miner	
10/1/36	A. J. Bear	Mucker	
10/1/36	N. F. Enos	Mucker	
10/1/36	Grant Wimberley	Mucker	
10/1/36	A. R. Crawford	Mucker	
10/1/36	T. J. Kearney	Mucker	
10/1/36	L. F. Hawkins	Miner	

*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous service Last day worked</i>
10/1/36	Harold Smith	Mucker	
10/1/36	H. J. Kading	Mucker	
10/1/36	A. B. Richardson	Mucker	
10/1/36	R. W. Burns	Mucker	
10/1/36	F. L. Knornschild	Carpenter	
10/1/36	*John A. DeGomez	Miner	9/11/36
10/1/36	J. J. Kelvey	Mucker	
10/1/36	C. B. French	Carpenter	
10/3/36	George Mason	Mucker	
10/3/36	W. F. Martin	Mucker	
10/3/36	H. T. Bagley	Mucker	
10/3/36	Franklin Daniel	Mucker	
10/3/36	C. H. Hill, Jr.	Mucker	
10/3/36	J. L. Cleveland	Mucker	
10/3/36	H. H. Harmon	Mucker	
10/3/36	J. T. Hancock	Mucker	
10/5/36	A. C. Combel	Machinist apprentice	
10/5/36	J. Louis Marko	Machinist apprentice	
10/5/36	John G. Munsey	Electrician apprentice	5/26/36
10/5/36	C. G. Wood	Chemist	
10/8/36	T. L. Herrington	Mucker	
10/8/36	Bill Younger	Mucker	
10/8/36	L. C. North	Mucker	
10/8/36	T. R. Reed	Mucker	
10/8/36	R. S. Wallace	Mucker	
10/8/36	C. J. Wright	Mucker	
10/8/36	D. H. Holt	Mucker	
10/8/36	R. G. Dickey	Mucker	
10/8/36	W. M. Cook	Mucker	
10/8/36	J. L. Peck	Mucker	
10/10/36	*E. W. Johnson	Miner	
10/13/36	F. C. Cawthon	Miner	
10/13/36	R. R. Roberts	Miner	
10/13/36	D. H. Spivey	Miner	5/11/36
10/10/36	B. D. Wimberley	Miner	
10/15/36	*Harold Webster	Miner	6/15/36
10/1/36	*Mrs. C. W. Wilcox	Librarian	
10/19/36	I. C. Miller	Mucker	
10/17/36	T. D. Bailly	Mucker	
10/17/36	E. V. Evans	Mucker	
10/17/36	A. A. Hufstutler	Mucker	
10/19/36	W. E. Taylor	Mucker	
10/21/36	C. G. Wheeler	Mucker	
10/17/36	J. N. Demas	Miner	
10/17/36	T. R. Latham	Mucker	
10/17/36	C. B. Cook	Mucker	
10/19/36	B. F. Jacobson	Mucker	
10/17/36	*P. F. Brown	Mucker	7/23/36
10/19/36	W. F. Ray	Miner	4/28/36
10/21/36	R. D. Hastie	Mucker	8/6/36
10/17/36	J. J. Payne	Mucker	
10/19/36	J. T. Turner	Mucker	
10/17/36	C. W. Carley	Miner	6/30/36
10/23/36	A. M. Allen	Mucker	
10/23/36	W. I. Hawkins	Mucker	
10/23/36	C. L. Carnahan	Mucker	

**Exhibit A, Attached to Stipulation.**

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous service: Last day worked</i>
10/23/36	B. L. Wilmeth	Mucker	
10/21/36	J. H. Atkinson	Watchman	8/15/35
10/28/36	R. J. Wish	Mucker	
10/28/36	C. M. Duncan	Miner	
10/28/36	Monty Wathney	Miner	
10/28/36	E. C. Hibble	Mucker	
10/28/36	W. E. Hargis	Miner	
10/28/36	V. P. Kelly	Mucker	
10/28/36	*Arthur Detloff, Jr.	Miner	3/6/36
10/28/36	J. Q. Farrell	Miner	10/1/24
10/8/36	W. M. Miller	Mucker	
10/31/36	G. R. Pruitt	Mucker	
10/31/36	Emol Cavaness	Miner	4/25/27
10/13/36	*Hilda Andrews	Nurse	
10/1/36	*Doris E. Knowles	Nurse	
11/22/36	J. H. Henderson	Miner	10/23/36
11/3/36	*Bill Trezise	Boilermaker helper	10/27/36
11/2/36	S. E. Beach	Mucker	
11/2/36	A. R. Olney	Miner	
11/2/36	W. E. Pruitt	Mucker	
11/2/36	H. P. Dean	Mucker	
11/2/36	J. L. O'Brien	Mucker	
11/4/36	T. L. Dunlap	Mucker	
11/4/36	C. P. Cowling	Carpenter apprentice	
11/4/36	K. D. McPherson	Carpenter apprentice	
11/2/36	H. F. Campbell	Miner	
11/2/36	J. M. Atkins	Miner	3/24/30
11/2/36	C. R. Henderson	Miner	8/17/22
11/4/36	A. T. Hoy	Electrician apprentice	8/29/35
11/7/36	R. A. Cashell	Mkr	
11/7/36	E. R. Harmon	Mucker	
11/6/36	H. M. Jewell	Carpenter	
11/7/36	Millard Rouse	Miner	4/30/30
11/4/36	*Leroy Callison	Mucker	8/20/36
11/5/36	*G. A. Looman	Miner	10/31/36
11/5/36	Herbert Bednorz	Mucker	
11/10/36	J. E. Chantry	Mucker	
11/10/36	E. L. Blalock	Mucker	
11/10/36	J. C. Moore	Mucker	
11/10/36	P. K. McCollister	Mucker	
11/10/36	Robert Jackson	Mucker	
11/10/36	C. T. Everett	Mucker	
11/10/36	F. T. Baxter	Mucker	
11/10/36	L. H. Spilsbury	Mucker	
11/10/36	R. L. Williamson	Mucker	
11/10/36	R. W. Hamel	Mucker	
11/10/36	C. R. Wynes	Mucker	
11/12/36	Tony Maidic	Mucker	
11/12/36	Millard Atkins	Mucker	
11/12/36	T. L. Greenwood	Mucker	
11/12/36	W. H. Clark	Mucker	
11/12/36	W. H. Green	Mucker	
11/12/36	R. A. Bernette	Mucker	
11/12/36	G. E. Slaughter	Mucker	
11/12/36	Ralph Scott	Mucker	
11/12/36	C. M. Carley	Mucker	



*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous work Last day worked</i>
11/12/36	A. D. Lawson	Miner	
11/12/36	R. R. McPeters	Mucker	
11/12/36	S. H. Alexander	Mucker	
11/12/36	M. L. Lynch	Mucker	
11/7/36	C. E. Jarnigan	Miner	
11/7/36	Horace Griffin	Hotel porter	
11/14/36	George Sandich	Watchman	
11/17/36	G. E. Nelson	Miner	
11/17/36	J. H. Hell	Mucker	
11/17/36	H. C. Pendergraft	Miner	
11/17/36	I. R. Van Cleave	Miner	
11/17/36	C. S. Bennett	Miner	
11/17/36	G. G. Page	Miner	
11/17/36	*D. I. Stutzman	Mucker	4/4/36
11/17/36	C. J. Rollins	Miner	5/29/31
11/12/36	W. W. Lowrence	Mucker	
11/12/36	Blanchie B. Ray	Stenographer	
11/17/36	Theodore Brooks	Hospital orderly	
11/20/36	R. P. Peck	Mucker	
11/21/36	V. B. Ackerson	Mucker	
11/21/36	Isaac D. McCoy	Miner	
11/19/36	C. H. Lively	Miner	
11/19/36	W. S. Crow	Miner	
11/19/36	J. A. Horvath	Miner	
11/21/36	J. E. Price	Mucker	
11/21/36	F. H. Johnson	Mucker	
11/19/36	C. A. Adams	Miner	
11/21/36	O. C. Stanbrough	Miner	
11/19/36	F. B. Campbell	Miner	8/11/27
12/1/36	M. F. Powers	Miner	
12/1/36	D. S. Craig	Mucker	
12/1/36	J. D. Hurley	Mucker	11/1/30
12/2/36	D. J. Shea	Mucker	
12/1/36	R. E. McKinnon	Miner	
12/1/36	N. T. Peterson	Miner	
12/1/36	Andrew Angle	Miner	12/30/29
12/1/36	W. P. Stensgaard	Machinist	
12/4/36	M. C. Martinez	Laborer	
12/4/36	J. M. Sotelo	Laborer	
12/4/36	E. M. Chavez	Laborer	
12/4/36	Paul Felix	Laborer	
12/4/36	Carlos Pena	Laborer	
12/1/36	*B. O. Simmonds	Mucker	8/7/36
12/1/36	*L. E. Harris	Miner	10/26/36
12/4/36	G. F. Garcia	Laborer	12/12/30
12/4/36	Francisco Rivera	Laborer	11/9/31
12/7/36	M. E. Lane	Mucker	
12/7/36	G. K. Housley	Miner	
12/7/36	A. R. Hicks	Miner	
12/7/36	L. L. Myers	Miner	
12/7/36	N. R. Combs	Pipeman	
12/7/36	*Howard Dennison	Mucker	3/10/36
12/9/36	W. E. Votaw	Miner	
12/9/36	Lloyd Votaw	Miner	
12/9/36	Flank Slaten	Mucker	
12/9/36	Earl Barnes	Miner	

*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous service: Last day worked</i>
12/9/36	R. R. Corp	Miner	
12/9/36	C. W. Teeples	Miner	
12/9/36	T. L. Buford	Mucker	
12/9/36	Melvin Stockman	Miner	
12/14/36	*W. H. Clark	Mucker	12/1/36
12/14/36	*W. T. Edwards	Mucker	11/30/36
12/18/36	Carmen Moreno	Laborer	7/31/36
12/16/36	F. O. Lott	Mucker	
12/16/36	E. H. Stoner	Miner	
12/16/36	B. O. Johnson	Miner	
12/16/36	T. W. Bignell	Miner	8/28/30
12/16/36	L. O. Thompson	Mucker	
12/18/36	Charlie Shelton	Mucker	
12/18/36	O. E. Smith	Mucker	
12/18/36	T. P. Bostick	Mucker	
12/18/36	A. D. Thompson	Mucker	
12/18/36	J. H. Headrick	Mucker	
12/18/36	O. R. Atkins	Mucker	
12/16/36	J. M. Dobler	Miner	
12/16/36	J. C. Tucker	Miner	
12/16/36	J. E. Linsley	Mucker	
12/18/36	G. L. Henry	Mucker	2/23/28
12/18/36	F. D. Wooley	Mucker	
12/18/36	C. E. Smith	Mucker	
12/16/36	I. B. Harper	Painter	
12/18/36	A. M. Mauldin	Pipeman helper	
12/16/36	J. F. Henderson	Electrician	
12/16/36	C. H. Salmons	Miner	11/29/27
12/16/36	Otho Fowler	Miner	11/25/29
12/16/36	F. J. Gallagher	Carpenter	10/23/30
12/22/36	W. C. Miller	Mucker	
12/21/36	*J. B. McPherson	Mucker	9/11/36
12/21/36	N. J. Miller	Miner	4/2/30
12/21/36	*W. P. Sertic	Mucker	9/5/36
12/21/36	J. A. Smith	Mucker	4/12/30
12/26/36	J. L. Gomez	Miner	11/25/36
12/28/36	J. M. Pilarczyk	Mucker	
12/28/36	C. W. Wittstruck	Miner	
12/29/36	*C. E. Catt	Mucker	10/31/36
12/29/36	John Snyder	Miner	4/30/30
12/29/36	Ernest Snyder	Miner	4/30/30
12/29/36	M. J. Cowan	Miner	6/9/36
12/30/36	H. K. Spilsbury	Mucker	
12/31/36	*J. L. Hedgecock	Miner	8/17/36
12/31/36	Crate Stanbrough	Miner	10/10/27
12/31/36	L. J. Robison	Mucker	6/11/29
12/21/36	*D. F. Vonk	Dispensary clerk	
12/24/36	*K. E. Estes	Dispensary clerk	
1/1/37	Goeth Garnett	Mucker	
1/1/37	Clyde Hendricks	Mucker	
1/1/37	Ike Gorman	Mucker	
1/1/37	J. F. Teran	Laborer	
1/1/37	Porfirio De Leon	Laborer	
1/1/37	Reynaldo E. Duron	Laborer	9/26/32
1/1/37	J. S. Guillen	Laborer	
1/1/37	Antonio F. Ohton	Laborer	
1/1/37	Dionicio Moreno	Laborer	3/5/30

*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous work Last day worked</i>
1/4/37	Glen O'Leary	Mucker	
1/4/37	K. E. Lund	Miner	
1/5/37	Omar Doby	Mucker	
1/5/37	P. H. Isbell	Mucker	
1/5/37	J. P. Walters	Mucker	
1/5/37	B. B. Lovelady	Miner	
1/5/37	L. C. Wright	Mucker	
1/5/37	C. R. Fritz	Machinist helper	
1/4/37	J. E. Greene	Blacksmith helper	
1/5/37	J. M. Lucero	Miner	
1/5/37	M. D. Coggins	Mucker	7/3/36
1/5/37	J. N. Toelkes	Miner	6/14/28
1/5/37	E. B. Munson	Tool nipper	4/30/30
1/7/37	J. P. Spilsbury	Mucker	
1/7/37	A. J. Hallsted	Mucker	
1/9/37	E. H. Childers	Mucker	
1/9/37	H. G. Wallis	Mucker	
1/9/37	M. J. Wohler	Mucker	
1/9/37	M. B. Lovett	Mucker	
1/9/37	G. S. Nelson	Mucker	
1/7/37	H. E. Cobb	Mucker	
1/7/37	L. A. Webb	Mucker	
1/9/37	F. W. Sanders	Miner	
1/9/37	R. M. Wilson	Mucker	
1/9/37	J. L. Parnell	Mucker	
1/9/37	Gurney Dunham	Mucker	
1/9/37	B. H. Greer	Mucker	
1/9/37	G. E. Barnett	Mucker	
1/7/37	P. M. Hunt	Mucker	
1/9/37	J. D. E. Dixon	Mucker	
1/9/37	J. D. Mahoney	Mucker	
1/8/37	Fernando M. Ochoa	Mucker	
1/7/37	Canuto Sena	Laborer	
1/8/37	P. C. Lanez, Jr.	Laborer	
1/7/37	*H. H. Hunt	Miner	9/4/36
1/7/37	J. G. A. Juntola	Mucker	
1/7/37	W. S. Lynch	Mucker	
1/7/37	A. V. Massett	Mucker	2/14/29
1/7/37	George Gagnon	Miner	10/17/27
1/9/37	V. J. Dugie	Miner	
1/9/37	S. W. McNair	Miner	5/8/29
1/11/37	E. L. Orton	Miner	
1/11/37	G. E. Anderson	Mucker	
1/11/37	Archie Burns	Mucker	
1/11/37	S. F. J. Jones	Mucker	
1/11/37	P. L. Smith	Miner	
1/11/37	L. L. Pruett	Mucker	
1/11/37	W. W. Gregg	Miner	
1/11/37	Cliff Cannon	Miner	
1/11/37	R. E. Burns	Boilermaker helper	
1/4/37	C. O. Bloomquist	Clerk	
1/11/37	Kohn Rooney	Miner	7/29/36
1/11/37	*M. K. Jean	Miner	10/31/36
1/13/37	J. M. Watson	Miner	
1/13/37	B. K. Gillespie	Miner	
1/13/37	M. W. Bouldin	Miner	



**Exhibit A, Attached to Stipulation.**

Date Hired	Name	Occupation	If had previous service: Last day worked
1/13/37	E. N. Helgeson	Miner	
1/13/37	O. E. Edwards	Miner	
1/13/37	F. L. Schaunaman	Miner	
1/13/37	Clair Nielson	Mucker	
1/13/37	F. L. Coons	Mucker	
1/13/37	C. E. Frizzell	Miner	
1/13/37	O. D. Booth	Miner	
1/13/37	C. W. Deeter	Miner	
1/13/37	E. W. Markham	Carpenter	
1/13/37	O. H. Mathewsom	Boilermaker apprentice	
1/12/37	Lee Griffin	Janitor	
1/13/37	Claude Tucker	Miner	7/17/30
1/13/37	T. R. Bell	Miner	9/8/36
1/15/37	W. B. Urquhart	Miner	
1/15/37	B. F. Brown	Mucker	
1/15/37	J. C. Shultz	Mucker	
1/15/37	E. J. Delpaz	Miner	
1/15/37	R. R. Rowan	Miner	
1/15/37	D. E. Hensley	Mucker	
1/15/37	C. R. Van Cleave	Mucker	
1/15/37	H. E. Fanjoy	Electrician	
1/15/37	C. E. Luna	Miner	3/14/27
1/18/37	G. B. Adcock	Mucker	
1/18/37	W. M. Whitehill	Miner	
1/18/37	N. F. Hazen	Miner	
1/18/37	S. J. Brockman	Miner	
1/18/37	R. E. Mundell	Mucker	
1/18/37	S. J. Adams	Carpenter	
1/18/37	A. J. King	Pipeman helper	
1/18/37	J. H. Ronning	Electrician	
1/18/37	*D. T. Hunt	Miner	11/30/36
1/20/37	G. L. Allen	Miner	
1/20/37	Floyd Host	Miner	
1/20/37	A. E. Doolittle	Miner	
1/20/37	K. D. Howell	Miner	
1/20/37	C. G. Medley	Miner	
1/20/37	J. P. Carter	Miner	
1/20/37	A. M. Mattingly	Electrician	
1/20/37	*F. H. McCulloch	Mucker	1/13/37
1/20/37	*W. J. Hill, Jr.	Mucker	9/19/36
1/23/37	E. B. Brooks	Miner	9/15/35
1/23/37	C. R. Lewis	Miner	
1/23/37	M. D. Averitt	Mucker	
1/23/37	George Wilson	Miner	
1/23/37	L. P. Johnson	Miner	
1/23/37	Joe Del Santo	Blacksmith helper	
1/23/37	*T. J. Salmon	Miner	7/31/36
1/23/37	F. H. Heckler	Mucker	8/16/29
1/23/37	*James Dearing	Miner	1/4/37
1/23/37	A. M. Harmon	Mucker	2/28/31
1/23/37	W. R. Kumero	Boilermaker	
1/18/37	Kenneth Sellers	Assayer	5/9/36
1/26/37	Frank Carothers	Miner	
1/26/37	O. M. Thompson	Miner	
1/26/37	M. A. Torres	Laborer	
1/26/37	J. D. Cooper	Mucker	7/6/28

*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous service Last day worked</i>
1/26/37	R. J. Mann	Miner	
1/26/37	Si Cornett	Miner	
1/26/37	Pedro Carino	Laborer	9/15/35-
1/28/37	L. H. Sevey	Miner	1/11/30
1/28/37	P. R. Congrove	Miner	
1/28/37	H. C. Miller	Miner	
1/28/37	V. A. Orton	Miner	
1/28/37	George Onufrock	Miner	
1/28/37	C. L. Smythe	Miner	
1/28/37	E. D. Johnson	Pipeman	
1/30/37	L. B. Cary	Mucker	1/13/37
1/11/37	Dr. G. W. Patterson	Physician	
1/27/37	C. M. Wolcott	Clerk	
1/25/37	Leona McGuire	Hotel maid	
1/8/37	Pat Lucas	Janitor	
1/28/37	James Coleman	Hospital orderly	
1/28/37	Colleen Smith	Hotel maid	
1/26/37	Stephanie Kraker	Hospital nurse	
1/28/37	Bonnie Key	Hotel maid	
1/29/37	H. J. Hierl	Chemist	
1/25/37	*Theodore T. Brooks	Hospital orderly	
1/22/37	Nine Barr	Hospital nurse	
1/16/37	*Rosella Hill	Hospital nurse	
1/22/37	*Caroline Nixon	Hospital nurse	
2/1/37	B. L. Kinnard	Miner	
2/1/37	J. G. Mitchum	Miner	
2/1/37	Steve Davids	Miner	
2/1/37	R. M. Diviney	Miner	
2/1/37	H. W. Goot	Miner	
2/1/37	Everett Duncan	Miner	
2/1/37	S. G. Beckworth	Miner	
2/1/37	L. P. Anderson	Miner	
2/1/37	W. N. Harris	Miner	6/15/29
2/1/37	S. M. Akin	Mucker	
2/3/37	C. L. Chavez	Laborer	
2/3/37	Ambrosio Sanchez	Laborer	
2/3/37	G. Y. Valenzuela, Jr.	Laborer	
2/3/37	G. R. Martinez	Laborer	
2/3/37	D. G. Moreno	Laborer	
2/1/37	G. J. Simley	Pipeman	
2/1/37	J. B. Hunter	Pipeman	
2/3/37	Angelo Hiraless	Laborer	
2/3/37	S. P. Savedra	Trackman	10/29/31
2/3/37	A. S. Cornejo	Trackman	
2/3/37	E. P. Mendoza	Trackman	
2/3/37	M. F. Thompson	Miner	
2/1/37	J. A. Hoffman	Miner	
2/1/37	C. L. Morris	Miner	9/11/36
2/1/37	T. H. Conger	Electrician	
2/3/37	Simon Pacheco	Trackman	10/19/29
2/4/37	Germano Benedotti	Miner	
2/4/37	Clyde Whipple	Miner	
2/4/37	A. A. Gray	Miner	
2/4/37	R. D. Barron	Mucker	8/30/27
2/4/37	W. G. Ashman	Mucker	3/8/32
2/4/37	*C. W. Casley	Miner	1/12/37

*Exhibit A, Attached to Stipulation.*

Date Hired	Name	Occupation	If had previous service: Last day worked
2/4/37	*Carl Henderson	Miner	11/15/36
2/4/37	Florian Pilarczyk	Miner	6/8/28
2/6/37	J. H. Hatton	Mucker	
2/6/37	H. B. Staas	Miner	
2/6/37	W. C. Ogle	Miner	
2/6/37	John Peterson	Miner	
2/6/37	E. F. Allen	Miner	
2/6/37	G. W. Scott	Miner	
2/6/37	J. C. Roots	Miner	
2/6/37	W. R. Scott	Miner	
2/9/37	E. W. Wagner	Mucker	
2/9/37	R. O. Hickman	Mucker	
2/9/37	Jack Hawn	Miner	
2/9/37	J. R. Turnbull	Miner	
2/9/37	G. M. Anderson	Mucker	
2/9/37	S. E. Cain	Mucker	
2/9/37	R. C. Ayala	Laborer	
2/9/37	*C. T. Bagley	Miner	
2/9/37	N. A. Bell	Miner	
2/9/37	A. L. Avilez	Laborer	3/19/30
2/11/37	J. L. McCadden	Miner	
2/11/37	H. O. Williams	Miner	
2/11/37	B. B. Bailey	Mucker	
2/11/37	*D. M. Whitlow	Mucker	9/30/36
2/11/37	J. C. Beldwin	Miner	
2/11/37	I. E. Short	Miner	10/15/25
2/13/37	G. L. Elston	Miner	
2/13/37	A. C. Linn	Miner	
2/13/37	H. B. Cares	Miner	
2/13/37	Ambrose Latimer	Miner	
2/13/37	R. E. Davenport	Mucker	
2/13/37	J. C. Hedgecock	Mucker	
2/13/37	D. G. Tyler	Mucker	
2/13/37	Wade Lacey	Miner	
2/13/37	W. L. Humphries	Mucker	
2/13/37	B. E. Roberts	Miner	2/16/31
2/13/37	*Roy Lynch	Miner	1/31/37
2/13/37	J. W. Evans	Miner	9/4/36
2/12/37	*I. D. McCoy	Miner	2/8/37
2/12/37	W. N. Rushin	Mucker	
2/12/37	H. R. Wilcox	Mucker	
2/12/37	W. E. Tomkinson	Mucker	
2/12/37	H. G. Houston	Mucker	
2/13/37	*Harry L. Kope	Electrician helper	7/31/36
2/15/37	E. M. Holbrook	Electrician	
2/12/37	J. G. Benites	Laborer	
2/13/37	S. J. Hoener	Miner	1/16/37
2/16/37	J. E. Dawson	Watchman	2/10/37
2/16/37	A. J. Olander	Mucker	
2/16/37	A. J. Shank	Miner	
2/16/37	W. A. Carnahan, Jr.	Mucker	
2/15/37	R. R. Wines	Mucker	
2/15/37	J. W. Muldoon	Mucker	
2/15/37	R. W. Harris	Mucker	
2/15/37	R. E. Fletcher	Mucker	
2/15/37	N. A. Haynes	Miner	



## Exhibit A, Attached to Stipulation.

Date Hired	Name	Occupation	If had previous work Last day worked
2/15/37	O. L. Roberts	Miner	
2/15/37	J. C. Mathis	Miner	
2/15/37	R. H. Stewart	Miner	
2/16/37	C. D. Cotton	Miner	
2/16/37	G. R. Johnson	Mucker	
2/16/37	M. H. Fullenwider	Miner	
2/16/37	H. J. Fullenwider	Miner	
2/16/37	H. P. Roberts	Miner	
2/15/37	F. E. Nuno	Miner	
2/13/37	C. R. Coleman, Jr.	Janitor	
2/1/37	Edith Wiley	Nurse	
2/16/37	*J. E. Massie	Miner	12/14/36
2/16/37	V. J. Beriendis	Mucker	7/31/35
2/16/37	John Flynn	Watchman	8/7/31
2/2/37	*Margery Jordan	Nurse	
2/17/37	C. E. Clark	Miner	
2/17/37	J. F. Stapley	Miner	
2/17/37	C. L. Nutter	Miner	
2/17/37	I. W. Carpenter	Miner	
2/17/37	J. A. Pierce	Mucker	
2/17/37	Clark (Tod) Gilland	Mucker	
2/17/37	F. A. Franklin	Mucker	
2/17/37	Olof Wade	Mucker	
2/17/37	C. W. Ravenscraft	Miner	
2/17/37	Norbin C. Warhurst	Miner	
2/17/37	P. A. O'Brien	Miner	
2/17/37	L. A. Lee	Miner	12/23/29
2/17/37	F. W. Pinkerton	Mucker	11/23/26
2/18/37	D. J. Williams	Miner	
2/19/37	J. E. Sherley	Miner	
2/19/37	J. W. Congrove	Miner	
2/19/37	J. W. Prescott	Mucker	
2/19/37	J. J. Holton	Mucker	
2/19/37	H. F. Ramsey	Miner	
2/22/37	H. O. Bass	Miner	
2/22/37	M. B. Walden	Miner	
2/22/37	George Snodgrass	Miner	
2/22/37	J. M. Karvonen	Miner	
2/22/37	J. D. Gilman	Carpenter	
2/22/37	F. J. Murphy	Machinist	
2/22/37	C. F. Dahlgren	Mucker	
2/22/37	L. M. Gorman	Mucker	
2/22/37	C. C. Brashear	Carpenter	
2/24/37	John O'Malley	Miner	4/4/30
2/24/37	H. W. Preston	Mucker	
2/24/37	R. M. Brooke	Mucker	
2/24/37	S. F. Wickham	Mucker	
2/24/37	P. C. Lawless	Miner	
2/24/37	H. L. Foreman	Miner	
2/24/37	James Torley	Boilermaker	
2/24/37	A. G. Mason	Carpenter	
2/24/37	J. J. Cannon	Handyman	4/27/32
2/27/37	A. W. Constantine	Miner	
2/27/37	R. G. Liebmann	Miner	9/1/28
2/27/37	*K. E. Estes	Dispensary clerk	
2/23/37	*T. T. Brooks	Hospital orderly	

**Exhibit A, Attached to Stipulation.**

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous service: Last day worked</i>
3/1/37	R. L. Cuyler	Miner	
3/1/37	T. B. Hollimon	Miner	
3/1/37	D. G. McBryde	Mucker	
3/1/37	J. H. Kridel	Miner	
3/1/37	E. W. Kelly	Mucker	
3/1/37	H. W. Lyth	Carpenter	
3/1/37	Robert Simpson	Carpenter	
3/1/37	C. F. Deiro	Miner	7/25/29
3/1/37	J. A. Church	Miner	
3/1/37	Ernest MacDougall	Machinist helper	8/16/35
3/2/37	J. C. Kelly	Miner	
3/2/37	L. B. Collum	Miner	
3/2/37	B. H. Cauley	Miner	
3/2/37	O. E. Dillon	Miner	
3/2/37	R. A. Deets	Mucker	
3/2/37	E. D. Dickerson	Miner	
3/2/37	Patrick Evans	Miner	10/23/28
3/3/37	J. J. Martin	Miner	
3/3/37	F. F. Cooper	Miner	
3/3/37	H. O. Thornton	Mucker	
3/3/37	L. J. de Montegre	Miner	
3/3/37	M. E. Mitchell	Miner	
3/3/37	V. D. Collum	Miner	
3/3/37	C. G. McGuire	Miner	
3/4/37	D. O. Pendergraft	Mucker	
3/3/37	O. F. Tallant	Mucker	
3/3/37	E. C. Gregory	Boilermaker	
3/3/37	T. S. Gough	Blacksmith	
3/2/37	*G. W. Scott	Mucker	2/27/37
3/2/37	*V. B. Ackerson	Mucker	2/20/37
3/3/37	*G. L. Weatherford	Mucker	11/30/36
3/3/37	*H. L. Burkett	Mucker	10/22/36
3/3/37	C. J. Copeland	Pipeman helper	9/11/29
3/5/37	R. M. Orner	Miner	
3/5/37	A. B. Willemoes	Mucker	
3/5/37	C. E. Roden	Mucker	
3/5/37	R. J. Brucks	Mucker	
3/5/37	J. L. White	Miner	
3/5/37	Roy Stone	Mucker	
3/5/37	E. H. Oneal	Draftsman	
3/5/37	J. N. Oliver	Miner	4/30/30
3/8/37	C. G. Woodworth	Mucker	
3/8/37	S. H. Stauss	Miner	
3/8/37	R. W. Stauss	Miner	
3/8/37	R. J. Arnold	Mucker	
3/8/37	C. A. Van Troba	Miner	
3/8/37	Marvin Thompson	Mucker	
3/8/37	J. L. Beiler	Miner	
3/8/37	W. H. Crossland	Mucker	
3/8/37	F. I. Lindau	Draftsman	
3/8/37	D. M. Shaw	Mining engineer	
3/10/37	L. W. Williams	Mucker	
3/10/37	F. J. Miller	Mucker	
3/10/37	A. H. Turley	Mucker	
3/10/37	T. R. Blair	Mucker	
3/10/37	Cecil Williams	Mucker	

*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous service Last day worked</i>
3/10/37	C. E. Maxwell	Pipe fitter	
3/12/37	W. A. Smith	Mucker	
3/12/37	J. R. Campbell	Mucker	7/9/28
3/12/37	*W. J. Ferrell	Mucker	9/5/36
3/12/37	J. F. Kenney	Mucker	11/30/36
3/12/37	J. F. Kries	Miner	6/30/36
3/3/37	*Margery Jordan	Nurse	
3/15/37	G. M. Williams	Mucker	
3/15/37	Fred Doby	Mucker	
3/15/37	W. L. Althaus	Mucker	
3/15/37	B. E. Mayo	Mucker	
3/15/37	William Rogers	Mucker	
3/15/37	C. V. Jarrett	Mucker	
3/15/37	L. C. Jossart	Clerk	
3/15/37	R. D. Sertic	Hotel clerk	
3/16/37	*Jack Hawn	Miner	3/8/37
3/15/37	P. B. Smith	Mucker	3/15/37
3/17/37	J. W. Evans	Miner	
3/17/37	W. F. Doeltz	Draftsman	
3/17/37	W. R. Mayo	Miner	4/30/30
3/17/37	J. D. Hodges	Miner	11/24/36
3/17/37	Bob Gray	Miner	
3/17/37	G. L. Dungan	Miner	
3/19/37	J. J. Ward	Miner	
3/19/37	C. W. Brown	Miner	
3/19/37	Fred Randolph	Miner	
3/19/37	Kenneth Crowder	Miner	
3/19/37	J. C. Hutchison, Jr.	Painter helper	
3/19/37	Ralph Tomblin	Miner	
3/19/37	J. A. Stevens	Miner	11/15/33
3/19/37	Alvin Higgins	Miner	
3/19/37	B. H. Helms	Pipefitter	
3/22/37	W. W. Little	Mucker	
3/22/37	D. C. Johnston	Miner	
3/22/37	D. B. Byfield	Miner	
3/22/37	J. V. Cook	Miner	
3/22/37	F. R. Dawson	Miner	
3/22/37	Z. D. Hailey	Miner	
3/22/37	J. R. Hansen	Miner	
3/23/37	H. L. Burkett	Mucker	3/16/37
3/22/37	J. L. Anderson	Miner	
3/22/37	W. M. Dinsmore	Miner	4/14/26
3/22/37	Ernest Martineau	Miner	6/10/35
3/22/37	C. B. Valenzuela	Laborer	
3/24/37	E. L. Nelson	Miner	
3/24/37	R. M. Wilder	Miner	
3/24/37	Milburn Meadows	Mucker	
3/24/37	W. M. Miller	Miner	
3/24/37	L. M. Pastorius	Miner	
3/24/37	O. R. Harzman	Electrician	
3/22/37	Juan Ramirez	Laborer	
3/24/37	R. R. Angle	Mucker	1/13/30
3/24/37	A. F. Carter	Mucker	
3/24/37	*A. F. Oglesby	Mucker	11/15/35
3/26/37	R. C. Skinner	Miner	
3/27/37	A. R. Glasscock	Mucker	



*Exhibit A, Attached to Stipulation.*

Date Hired	Name	Occupation	If had previous service: Last day worked
3/27/37	H. H. Buckner, Jr.	Miner	
3/27/37	H. M. Bailey	Electrician	
3/27/37	A. C. Fellers, Jr.	Electrician	
3/27/37	A. L. Coltrin	Electrician	
3/27/37	*J. A. Hoffman	Miner	3/27/37
3/29/37	A. L. Duncan	Miner	
3/29/37	S. F. Gray	Miner	
3/29/37	Ernest Stewart	Mucker	
3/29/37	R. D. Froscio	Mucker	
3/29/37	P. V. Hiraies	Laborer	
3/29/37	H. M. Del Campo	Laborer	
3/29/37	J. A. Morrow	Miner	5/6/29
3/29/37	R. L. Hodgson	Miner	
3/29/37	E. F. Miller	Warehouseman	
3/26/37	*K. E. Estes	Dispensary clerk	
4/1/37	L. F. Harris	Mucker	
4/1/37	W. D. Tyree	Mucker	
4/1/37	M. J. Gunn	Mucker	
4/1/37	G. W. Rong	Mucker	
4/1/37	Beldon Smith	Mucker	
4/1/37	C. L. Moore	Pipe helper	
4/1/37	W. D. Collins	Boilermaker helper	
4/1/37	A. L. Rambo	Electrician	
4/1/37	G. C. Veliz	Boilermaker	3/15/31
4/1/37	T. J. White	Pipefitter	6/13/22
4/1/37	T. E. Tallant	Mucker	3/17/31
4/6/37	H. W. Lynch	Mucker	
4/2/37	O. M. Clarke, Jr.	Mucker	
4/6/37	J. R. Bateman	Laborer	
4/6/37	W. A. Winchester	Watchman	
4/6/37	*J. W. Muldoon	Mucker	3/30/37
4/6/37	Lauro Avechuco	Laborer	11/26/28
4/5/37	F. J. Wojcik	Watchman	
4/5/37	C. P. Peters	Watchman	
4/2/37	Gilbert Gardner	Mucker	
4/2/37	J. A. Peacock	Mucker	
4/2/37	W. R. Collier	Mucker	
4/6/37	E. A. Fehring	Mucker	
4/6/37	J. W. Lynch	Miner	
4/2/37	R. M. Elston	Miner	
4/6/37	C. C. Coleman	Miner	
4/2/37	Merced Alcantar	Laborer	9/2/30
4/2/37	J. E. Grant	Truck driver	
4/6/37	J. W. Tenney	Miner	7/7/30
4/6/37	F. M. Knoll	Miner	8/6/31
4/6/37	E. J. Beauford	Miner	
4/2/37	A. B. Teran	Laborer	10/28/31
4/2/37	Narcisco Rodriguez	Laborer	10/28/31
4/6/37	J. F. Peralta	Laborer	1/31/35
4/7/37	L. B. Franks	Carpenter	
4/7/37	A. R. Negri	Blacksmith helper	6/2/27
4/7/37	Juan Rivera	Laborer	6/29/28
4/7/37	Francisco V. Sanchez	Laborer	3/9/31
4/7/37	Pablo Nevarez	Laborer	1/11/29
4/8/37	A. J. Ricketts	Mucker	
4/8/37	J. A. Joy	Miner	

*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous service Last day worked</i>
4/8/37	R. M. Collins	Boilermaker	6/24/30
4/9/37	J. E. McLain	Miner	
4/9/37	Vernon Roberts	Mucker	
4/9/37	E. M. Harris	Mucker	
4/9/37	A. G. Lewis	Miner	
4/9/37	A. M. Carrillo	Laborer	
4/12/37	Harold Eldridge	Miner	
4/12/37	Roscoe Parker	Painter	
4/12/37	F. T. Mount	Carpenter	
4/12/37	R. R. Buckridge	Mucker	
4/12/37	V. S. Barnett	Mucker	7/15/30
4/10/37	Victoriano Silva	Laborer	4/2/37
4/12/37	James Costello	Miner	
4/14/37	F. A. Thompson	Mucker	
4/15/37	G. L. Brown	Mucker	
4/15/37	H. W. Hardt	Mucker	
4/15/37	J. I. Taylor	Mucker	
4/15/37	D. O. Jarvis	Mucker	
4/15/37	J. C. Martineau	Mucker	
4/14/37	G. E. Johnson	Miner	
4/14/37	Bob Atkins	Miner	
4/15/37	W. E. Moore	Mucker	
4/15/37	P. J. Hunt	Mucker	
4/15/37	R. R. Wachs	Machinist	
4/13/37	August Juntunen	Miner	4/26/30
4/16/37	R. P. Anderson	Miner	
4/17/37	W. A. Brady	Mucker	
4/17/37	D. M. Kelly	Mucker	
4/17/37	N. G. Green	Miner	
4/17/37	Ira Hartman	Mucker	
4/17/37	T. E. Shackelford	Mucker	
4/17/37	R. A. Bowers	Mucker	
4/16/37	M. G. Fimbres	Laborer	
4/16/37	F. G. Shreves	Carpenter	
4/17/37	W. E. Little	Machinist	
4/15/37	J. C. Gonzales	Laborer	12/11/29
4/16/37	Mauricio Gil	Laborer	
4/16/37	J. M. Robles	Laborer	3/24/30
4/16/37	Jose DeLeon	Laborer	3/11/31
4/16/37	Cisto Salazar	Laborer	4/21/30
4/16/37	E. E. Martinez	Laborer	9/30/30
4/16/37	J. C. Moreno	Laborer	12/30/30
4/20/37	S. O. Tanner	Mucker	
4/20/37	D. F. Blair	Mucker	
4/20/37	W. R. Phillips	Mucker	
4/20/37	G. S. Kearns	Mucker	
4/20/37	C. W. Davis	Mucker	
4/20/37	R. A. Treece	Mucker	
4/20/37	H. E. Rohrer	Mucker	
4/20/37	C. B. Penn	Mucker	
4/21/37	*F. T. Baxter	Mucker	
4/23/37	A. F. Ham	Mucker	
4/23/37	W. C. Dippert	Mucker	
4/23/37	W. T. Brunson	Mucker	
4/23/37	*W. W. Taylor	Mucker	
4/23/37	T. W. Rice	Mucker	

*Exhibit A, Attached to Stipulation.*

Date Entered	Name	Occupation	If had previous service: Last day worked
22/37	A. M. Janzan	Mucker	
23/37	A. J. Fowler	Mucker	
23/37	G. D. Smith	Mucker	
23/37	F. G. White	Mucker	
21/37	George Dunn	Mucker	
21/37	D. A. Page	Miner	
22/37	G. L. Burden	Mucker	
22/37	M. B. McLaughlin	Mucker	
22/37	J. N. Hall	Mucker	
22/37	Bartholomew Oliver	Mucker	
21/37	R. R. Teeple	Mucker	
22/37	A. C. Woods	Mucker	
22/37	Wilford Stokes	Mucker	
21/37	Martin Hernandez	Laborer	
21/37	Clifford Dean	Miner	4/30/30
21/37	B. F. Hall	Mucker	
23/37	W. W. Orton	Mucker	8/20/30
21/37	W. E. Lisonbee	Welder	11/20/28
22/37	C. P. Mansfield, Jr.	Mucker	
22/37	J. M. Bostick	Mucker	
22/37	R. L. Huntley	Mucker	
22/37	W. E. Warren	Mucker	
22/37	H. F. Williams	Mucker	
23/37	August Hillman	Laborer	
23/37	Blas Urbina	Laborer	
27/37	C. M. Suffield	Electrician	
23/37	A. S. Metzler	Laborer	
27/37	Robert Meier	Clerk	
23/37	Pedro Fabio	Laborer	7/5/29
23/37	Lasaro Burrola	Laborer	1/16/34
24/37	A. G. Romero	Laborer	
24/37	Melecio Robles	Laborer	3/6/29
23/37	*R. M. Haynes	Laborer	1/13/37
28/37	G. R. Jackson	Mucker	
28/37	Floyd Winchester	Mucker	
28/37	H. H. Chambers	Mucker	
28/37	Charlie McMenamy	Mucker	
28/37	J. M. Sanders	Mucker	
28/37	W. R. Beauford	Mucker	
27/37	H. E. Chase	Machinist	
30/37	D. J. McGinley	Mucker	
30/37	S. L. Wright, Jr.	Mucker	
29/37	J. M. Dodd	Mucker	
29/37	W. J. Abshier	Mucker	
24/37	J. W. Patterson	Janitor	
30/37	Carl Andrews	Miner	7/13/36
29/37	R. M. Adams	Mucker	8/8/27
30/37	Paul Mills	Miner	
23/37	*Doris E. Knowles	Nurse	
1/37	J. P. Smith	Miner	
1/37	K. N. Goodman	Mucker	
1/37	Gayle De Vilbiss	Mucker	
1/37	Robert Jones	Mucker	
1/37	W. A. Galloway	Mucker	
1/37	G. D. Peters	Miner	
1/37	A. D. Thomas	Mucker	



*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous service: Last day worked</i>
5/1/37	T. A. Brady	Tinsmith	
5/1/37	L. A. Colden	Electrician	
5/1/37	A. C. Yanez	Laborer	
5/1/37	R. H. Buckman	Miner	7/8/29
5/1/37	*Hugh Balke	Miner	4/3/36
5/1/37	L. A. Valenzano	Laborer	
5/4/37	R. S. Miller	Mucker	
5/4/37	J. M. West	Mucker	
5/4/37	W. B. Slaight	Mucker	
5/4/37	S. A. Mason	Miner	
5/4/37	A. L. Witt	Mucker	
5/4/37	C. L. Hicks	Mucker	
5/3/37	Andrew Morris	Carpenter	
5/4/37	M. H. Wood	Mucker	4/30/30
5/4/37	A. L. Cashell	Mucker	8/20/30
5/5/37	J. C. Foster	Mucker	
5/5/37	R. A. White	Mucker	
5/5/37	W. N. Meador	Mucker	
5/5/37	D. N. Holloway	Miner	
5/5/37	R. L. Smith	Mucker	
5/5/37	R. A. Sparks	Handyman	
5/5/37	*L. A. Aaron	Miner	6/29/36
5/5/37	*J. W. Wilson	Mucker	2/6/37
5/6/37	R. L. Gilliam	Mucker	
5/6/37	J. J. Phillips	Mucker	
5/6/37	J. M. Conery	Mucker	
5/6/37	A. D. Cox	Miner	
5/6/37	E. N. Mahana	Mucker	
5/6/37	T. A. Martin	Mucker	7/31/36
5/6/37	*J. L. McNeil	Miner	8/24/36
5/6/37	*R. G. Liebmann	Miner	3/29/37
5/7/37	W. H. Hooper	Mucker	
5/7/37	J. E. Jones	Miner	
5/8/37	J. D. Williams	Mucker	
5/8/37	W. E. Thompson	Miner	
5/7/37	W. L. Mayo	Mucker	
5/8/37	H. A. Saarick	Mucker	
5/7/37	C. E. Bertling	Mucker	
5/8/37	A. E. Hill	Mucker	
5/8/37	C. G. Hughes	Miner	
5/7/37	M. J. Brockman	Mucker	
5/8/37	P. E. Rustin	Mucker	
5/8/37	M. L. Renteria	Hotel maid	
5/8/37	Harvey Medley	Miner	4/26/30
5/7/37	W. J. Brame	Machinist	6/1/28
5/11/37	O. A. Mangum	Mucker	
5/11/37	A. N. Gafford	Mucker	
5/11/37	L. G. Rex	Mucker	
5/11/37	H. E. Dodson	Mucker	
5/11/37	F. L. Sullivan	Miner	
5/11/37	R. F. Sprague	Pipeman helper	
5/11/37	William Miller, Jr.	Miner	1/18/37
5/11/37	L. B. Johnson	Miner	4/26/30
5/10/37	*V. F. Wojcik	Clerk	1/16/37
5/12/37	W. J. Smith	Mucker	
5/12/37	O. M. Dennis, Jr.	Mucker	

*Exhibit A, Attached to Stipulation.*

Date Hired	Name	Occupation	If had previous service: Last day worked
12/37	T. R. Bozarth	Mucker	
12/37	V. L. Cook	Mucker	
12/37	J. F. Farnsworth	Mucker	
12/37	T. P. Blevins	Boilermaker	
12/37	*J. E. Mertaugh, Jr.	Mucker	2/16/37
12/37	*E. H. Stoner	Miner	2/27/37
12/37	*C. H. Salmons	Miner	2/1/37
13/37	L. W. Lloyd	Mucker	
13/37	I. G. Burns	Mucker	
13/37	J. M. Tidmore	Mucker	
13/37	T. L. Henson	Mucker	
5/37	Eloise A. Giffen	Stenographer	
13/37	A. O. Anderson	Mucker	
13/37	*George Wilson	Miner	2/27/37
13/37	Elmo Alexander	Mucker	10/13/30
14/37	W. A. Miller	Mucker	
14/37	R. E. Skates	Mucker	
15/37	E. C. Tallant	Mucker	
15/37	H. K. Tuschhoff	Mucker	
14/37	Vernon Davis	Mucker	
14/37	F. A. Jones	Mucker	
14/37	R. A. McFarlane	Miner	
15/37	W. H. McCahon	Miner	
15/37	C. W. Craig	Mucker	
15/37	P. M. Luna	Laborer	
14/37	M. R. Smith	Mucker	
15/37	R. E. Noriega	Laborer	10/29/31
15/37	Aniceto Gonzales	Laborer	9/30/30
1/37	Jose Vasquez	Laborer	2/6/28
18/37	Edward Toffler	Mucker	
18/37	L. W. Brown	Miner	
18/37	C. M. Rhoads	Mucker	
18/37	W. D. Tanner	Mucker	
17/37	*C. W. Brown	Miner	
17/37	*O. C. Stanbrough	Miner	1/4/37
18/37	*F. E. Baumkirchner	Mucker	9/4/36
19/37	A. A. Moss	Mucker	
19/37	Carl Poole	Mucker	
19/37	Thomas Brice	Mucker	
19/37	E. H. Diffie	Mucker	
19/37	J. H. Bricker, Jr.	Mucker	
19/37	H. C. Boyles	Mucker	
20/37	J. R. Costey	Mucker	
20/37	S. C. McCahon	Miner	
20/37	C. E. Younger	Mucker	
20/37	L. J. O'Neill	Mucker	
20/37	J. D. Alkin	Mucker	
20/37	C. W. Pruitt	Mucker	1/5/35
20/37	*D. H. Spiyey	Miner	1/31/37
21/37	T. W. Brock	Mucker	
20/37	F. R. Quill	Mucker	
21/37	J. M. Bruce	Mucker	
21/37	C. J. Beecroft	Mucker	
21/37	R. E. Birdwell	Miner	
21/37	B. G. Taff	Mucker	
21/37	T. O. Luedtke	Mucker	

*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous service Last day worked</i>
5/21/37	N. S. Kindie	Miner	
5/22/37	J. A. Jiminez	Laborer	
5/22/37	Jesus Felix	Laborer	
5/22/37	J. J. Feeney	Mucker	2/11/28
5/21/37	J. C. Jones	Mucker	11/27/29
5/22/37	G. M. Loya	Laborer	1/2/30
5/25/37	B. P. Ortiz	Mucker	
5/25/37	C. B. Williams	Mucker	
5/25/37	J. E. Blackwell	Mucker	
5/25/37	J. H. Lacy, Jr.	Mucker	
5/25/37	Barnie Turner	Mucker	
5/26/37	C. W. Large	Mucker	
5/26/37	*G. G. Gilman	Mucker	8/21/36
5/26/37	*W. J. Knox	Miner	9/5/36
5/26/37	*J. A. Lemon	Mucker	10/22/36
5/26/37	*L. C. Clark	Mucker	8/14/36
5/26/37	*C. K. Schmidt	Miner	6/30/36
5/27/37	O. L. Tallant	Mucker	
5/27/37	E. W. Hutchens	Mucker	
5/27/37	L. H. Tepney	Mucker	
5/27/37	W. E. Lawson	Mucker	
5/27/37	Delma Fikes	Mucker	
5/27/37	G. O. Younger	Mucker	
5/26/37	*A. B. Teran	Laborer	5/17/37
5/27/37	*R. C. James	Mucker	8/31/36
5/27/37	B. R. Jones	Mucker	
5/27/37	Pete Fenn	Miner	4/22/26
5/28/37	D. A. Herrington	Mucker	
5/28/37	J. J. Ryan	Mucker	
5/28/37	W. J. Hunt	Mucker	
5/28/37	Ralph Wood	Mucker	
5/28/37	H. D. Mauldin	Mucker	
5/28/37	W. C. Slover	Mucker	
5/28/37	*J. H. Bendixen	Miner	9/5/36
5/28/37	A. E. Lightfoot	Mucker	
5/29/37	D. C. Root	Mucker	
5/29/37	J. M. Modesett	Mucker	
5/29/37	C. E. Taylor	Mucker	7/29/29
5/29/37	Earl Dye	Miner	
5/29/37	P. R. Abril	Laborer	3/21/28
5/29/37	A. R. Villa	Laborer	
5/10/37	Susan Boyle	Nurse	
5/31/37	B. M. Sproule	Mining engineer	
5/1/37	*Margery Jordan	Nurse	
5/3/37	*Nine Barr	Nurse	
5/31/37	*Chloen J. Smith	Hotel maid	
5/26/37	A. J. Breslin	Hospital orderly	
6/1/37	Corwin Jacobs	Miner	
6/1/37	F. C. Pickard	Mucker	
6/1/37	C. J. Miller	Miner	
6/1/37	P. G. Prather	Miner	10/15/30
6/1/37	*C. W. Weathers	Mucker	2/25/37
6/1/37	J. W. Dye	Mucker	1/13/37
6/1/37	*J. E. Werner	Mucker	3/12/37
6/1/37	C. E. Lanphere	Miner	2/5/35
6/1/37	*W. A. Andrews	Mucker	10/31/36



*Exhibit A, Attached to Stipulation.*

	Name	Occupation	If had previous service: Last day worked
1/37	W. M. Holmberg	Mucker	
2/37	W. T. Harris	Mucker	
3/37	C. C. Qualls	Mucker	
4/37	K. B. Howell	Mucker	
5/37	C. F. Mechler	Miner	
6/37	S. A. Rubic	Mucker	9/4/36
7/37	*W. G. Smith	Mucker	8/20/36
8/37	M. N. Besich	Mucker	
9/37	L. J. Bell	Miner	
10/37	J. C. Williamson	Mucker	
11/37	R. F. Conway	Mucker	
12/37	C. E. Ladd	Welder	
1/38	D. J. Harwood	Clerk	
2/38	D. M. Rayless	Hospital technician	
3/38	*M. O. Evans	Mucker	11/30/36
4/38	J. A. Kune	Miner	
5/38	A. E. Rickard	Mucker	
6/38	F. L. Shreves	Mucker	
7/38	Mack Pultz	Mucker	
8/38	J. W. Tidwell	Mucker	
9/38	W. G. Clark	Mucker	
10/38	A. V. Garcia	Laborer	
11/38	W. H. R. Webb	Laborer	
12/38	F. R. Burgess	Laborer	
1/39	F. L. Barcelo	Laborer	
2/39	W. P. Martinez	Laborer	
3/39	*W. T. Bendixen	Miner	8/30/35
4/39	*C. E. Jarnigan	Miner	12/1/36
5/39	*R. F. Hilburn	Miner	9/9/36
6/39	C. W. Loyd	Miner	
7/39	E. J. Jacobson	Mucker	
8/39	M. R. Abril, Jr.	Laborer	10/29/31
9/39	J. H. Stewart	Mucker	
10/39	E. M. Baumkirchner	Mucker	
11/39	R. L. Boat	Mucker	
12/39	*G. D. Allen	Mucker	9/4/36
1/40	*R. R. Schmid	Mucker	9/4/36
2/40	J. C. Andreas	Mucker	9/14/36
3/40	*B. R. Adams	Mucker	9/10/36
4/40	*D. F. Vonk	Dispensary clerk	
5/40	E. W. Harris	Mucker	
6/40	E. F. Cox	Mucker	
7/40	P. L. Pavlovich	Mucker	
8/40	E. J. Caldwell	Mucker	
9/40	R. M. House	Mucker	
10/40	J. H. Schissler, Jr.	Mucker	
11/40	C. C. Cameron	Mucker	
12/40	J. E. Petsche	Oiler	
1/41	Frank Dornik	Boilermaker apprentice	
2/41	*J. E. Pickering	Mucker	9/5/36
3/41	C. A. Coagrove	Miner	9/11/36
4/41	T. W. McSpadden	Mucker	1/25/37
5/41	*T. W. McGarry	Miner	9/5/36
6/41	D. E. Naegle	Miner	
7/41	*M. A. Boss	Mucker	9/5/36
8/41	Frank Bergatta	Laborer	4/24/29

*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous work Last day worked</i>
6/11/37	G. H. Crist	Mucker	
6/11/37	A. O. Nations	Mucker	
6/11/37	J. O. Nigra	Mucker	
6/11/37	*M. J. Dodge	Mucker	9/5/36
6/11/37	R. H. D'Albini	Mucker	8/22/36
6/11/37	Peter Kerwin	Miner	6/4/31
6/12/37	E. L. Keeth	Mucker	
6/12/37	R. E. Chevalier	Mucker	
6/12/37	F. A. Daubin, Jr.	Mucker	
6/12/37	H. W. Long	Miner	
6/12/37	W. L. Rickard	Mucker	
6/12/37	K. N. Cupp	Mucker	
6/12/37	J. R. Bowen	Mucker	
6/12/37	E. G. Lopez	Laborer	
6/12/37	*J. W. Cameron	Mucker	10/12/35
6/12/37	C. E. Thur	Miner	2/29/36
6/15/37	L. O. Dahlgren	Mucker	
6/14/37	*M. N. Besich	Mucker	6/12/37
6/16/37	J. W. Small	Mucker	
6/16/37	C. D. Davis	Machinist	
6/16/37	*J. B. McPherson	Mucker	1/4/37
6/16/37	*G. A. Rylance	Mucker	9/4/36
6/16/37	J. E. Holt	Mucker	4/9/30
6/16/37	*L. M. Berry	Mucker	5/31/37
6/21/37	A. F. Kristovich	Mucker	
6/22/37	D. G. McNeil	Mucker	
6/22/37	J. H. Macia	Mucker	
6/22/37	J. C. Sessions	Mucker	
6/22/37	C. C. Starbuck	Mucker	
6/22/37	H. J. Reed	Mucker	
6/22/37	E. J. King	Mucker	
6/22/37	J. E. Gannon	Machinist helper	
6/22/37	H. L. Henrie	Machinist helper	
6/5/37	Margaret E. Connelly	Nurse	
6/22/37	*L. M. Hall	Miner	6/10/37
6/22/37	*O. D. Haynie	Miner	6/2/37
6/21/37	*C. H. Johnston	Miner	6/15/37
6/21/37	H. C. Ambrose	Mucker	
6/21/37	*K. E. Estes	Mucker	4/4/37
6/21/37	H. G. Davis	Miner	6/10/35
6/23/37	R. S. Long	Miner	
6/23/37	H. H. Voelker	Miner	
6/22/37	Edward Conley	Miner	
6/23/37	C. G. Foreman	Mucker	
6/23/37	B. R. Jerman, Jr.	Mucker	
6/23/37	A. P. Bendixen	Finlay operator	10/30/36
6/22/37	*Gordon Hodges	Miner	3/30/37
6/22/37	Irvine MacDougall	Oiler	8/18/35
6/24/37	B. H. Barnette	Mucker	
6/24/37	I. G. Patrick	Mucker	
6/24/37	*R. C. Wood	Miner	6/17/37
6/23/37	*J. H. Henderson	Miner	4/27/37
6/24/37	O. D. Winkle	Mucker	12/31/28
6/24/37	F. W. Howell	Miner	4/21/30
6/24/37	U. T. Link	Miner	2/16/37
6/24/37	*L. S. Armstrong	Miner	4/17/37

*Exhibit A, Attached to Stipulation.*

Date	Name	Occupation	If had previous service: Last day worked
2/3/37	O. D. Chase	Mucker	
2/3/37	C. H. Maak	Mucker	
2/3/37	R. K. Beeth	Mucker	
2/3/37	C. M. Larsen	Mucker	
2/3/37	J. H. Townsend	Mucker	
2/3/37	J. B. Glenn, Jr.	Mucker	
2/3/37	B. H. Belluzzi	Mucker	
2/3/37	O. F. Satterfield	Mucker	
2/3/37	Charles Rapp, Jr.	Mucker	
2/3/37	N. E. Harris	Machinist helper	
2/3/37	*E. C. Lytle	Miner	3/8/37
2/3/37	*J. A. Morrow	Miner	4/12/37
2/3/37	*J. A. Hill	Mucker	9/7/36
2/3/37	Robert Long	Mucker	
2/3/37	F. S. Knight	Mucker	
2/3/37	M. R. Dungan	Mucker	
2/3/37	J. C. Nidiffer	Miner	
2/3/37	R. G. Charlton	Mucker	
2/3/37	C. L. Tate	Miner	9/14/27
2/3/37	*Andrew Angle	Miner	4/21/37
2/3/37	G. W. Coggin	Miner	1/30/32
2/3/37	D. E. Flanery	Miner	7/18/30
2/3/37	A. B. McClure	Porter	11/7/36
2/3/37	Edward Burke	Hospital orderly	
2/3/37	*E. B. Wiley	Nurse	
2/3/37	A. A. Torres	Laborer	
2/3/37	*W. E. Haygood	Mucker	5/31/37
2/3/37	*G. R. Sinclair	Mucker	9/10/36
2/3/37	R. G. Kelly	Boilermaker helper	8/21/36
2/3/37	Jefferson Oglesby	Miner	
2/3/37	Carlo E. Mazzoni	Mucker	
2/3/37	F. D. Long	Oiler	
2/3/37	*C. W. Loyd	Miner	6/23/37
2/3/37	H. J. Hart, Jr.	Mucker	8/31/36
2/3/37	*T. H. Voelker	Mucker	10/5/36
2/3/37	A. O. Orton	Mucker	7/24/30
2/3/37	Jack A. Wilson	Mucker	
2/3/37	Basil Hobgood	Mucker	7/15/36
2/3/37	Jack Howard	Miner	9/2/30
2/3/37	R. R. Pierce	Mucker	
2/3/37	Betty L. Kobey	Stenographer	
2/3/37	J. F. Barnes	Miner	4/30/30
2/3/37	D. K. Pence	Mucker	
2/3/37	*D. F. Vonk	Mucker	6/18/37
2/3/37	*G. A. F. Deahler	Mucker	9/15/36
2/3/37	M. W. Byfield	Miner	
2/3/37	L. J. Byfield	Miner	
2/3/37	B. L. Olson	Mucker	
2/3/37	Francisco Valenzuela	Laborer	
2/3/37	P. A. Gomez	Laborer	
2/3/37	J. S. Castillo	Laborer	
2/3/37	M. Z. Jaramillo	Laborer	
2/3/37	Gilbert Mendoza	Laborer	
2/3/37	J. A. Roberts	Miner	3/20/29
2/3/37	Luis Sepulveda	Laborer	7/31/28
2/3/37	G. C. Frazier	Mucker	



*Exhibit A, Attached to Stipulation.*

Date Hired	Name	Occupation	If had previous work Last day worked
7/13/37	Jack Brown	Miner	
7/13/37	C. E. Roberts	Miner	12/14/31
7/13/37	*G. A. Looman	Miner	3/30/37
7/13/37	W. T. Hanson	Mucker	
7/13/37	*E. F. Carnes, Jr.	Blacksmith helper	
7/14/37	E. H. Walker	Mucker	
7/14/37	M. G. Bloosevitch	Miner	
7/14/37	A. M. Cisneros	Laborer	
7/14/37	F. M. Reyes	Laborer	
7/14/37	C. A. Cota	Laborer	
7/9/37	T. L. Hall (Miss)	Stenographer	
7/20/37	A. H. Staniger	Miner	
7/29/37	K. L. Longan	Miner	
7/29/37	J. V. Beets	Mucker	
7/20/37	*J. S. Dymock, Jr.	Blacksmith helper	7/25/36
7/20/37	W. C. Merrill	Electrician helper	9/12/36
7/20/37	*J. C. Rogers	Electrician helper	9/12/36
7/20/37	*W. P. Sertic	Clerk	1/4/37
7/22/37	J. J. Raymond	Miner	
7/22/37	K. E. Grimm	Mucker	
7/22/37	*P. H. Keeler	Miner	
7/22/37	J. H. Clark	Mucker	
7/21/37	Henry Hansen	Car repairman	8/20/31
7/22/37	John Flores	Laborer	
7/22/37	*D. L. Jarvis	Miner	7/13/37
7/22/37	*R. E. Martyr	Miner	5/20/37
7/22/37	W. L. Moore	Miner	
7/22/37	Herman Conrow, Jr.	Miner	
7/22/37	C. T. Wood	Painter	
7/22/37	*C. W. Weathers	Miner	7/12/37
7/23/37	M. I. Connors	Miner	2/4/28
7/24/37	A. R. Martinez	Laborer	
7/24/37	*R. E. Whitlow	Miner	3/1/37
7/24/37	F. A. Baugh	Mucker	
7/26/37	Diego B. Corral	Laborer	
7/14/37	Tokie Hudson	Nurse	
7/27/37	Chester Brooks	Mucker	
8/2/37	R. O. Figueroa	Laborer	
8/2/37	D. A. Quijada	Laborer	
8/2/37	T. R. Ohton	Laborer	
8/3/37	A. R. Tonsi	Mucker	
8/3/37	D. D. Burnett	Mucker	
8/3/37	*L. E. Higgins	Miner	
8/3/37	S. S. Williams	Mucker	
8/3/37	M. E. E. Lane	Miner	
8/3/37	*W. L. Sholly	Miner	10/12/36
8/3/37	*Ray Coomer	Miner	1/4/37
8/3/37	*H. T. Coons	Mucker	10/12/36
8/5/37	Earl Van Treese	Miner	
8/5/37	T. J. Riggs	Mucker	
8/5/37	J. T. Verant	Miner	
8/5/37	C. T. Bostick	Mucker	
8/5/37	Timothy Monahan	Miner	
8/5/37	W. J. Evans	Miner	
8/5/37	*Howard Dennison	Mucker	5/26/37
8/5/37	H. H. Davis	Miner	

**Exhibit A, Attached to Stipulation.**

Date Hired	Name	Occupation	If had previous service: Last day worked
1/1/37	*M. W. Bouldin	Miner	1/19/37
1/1/37	H. E. Boice	Mucker	
1/1/37	Alexander Balich	Mucker	
1/1/37	C. E. Eldridge	Mucker	
1/1/37	P. W. Hanning	Miner	
1/1/37	T. O. Inaus	Mucker	
1/1/37	W. L. Dean	Miner	7/17/30
1/1/37	W. C. L. Holk way	Miner	
1/1/37	T. S. Dugie	Miner	10/27/31
1/1/37	*I. H. Miller	Mucker	
1/1/37	J. B. Williams	Chemist	8/1/35
1/1/37	H. D. Lee	Miner	
1/1/37	J. W. Johnston	Mucker	
1/1/37	O. B. Eitel	Mucker	
1/1/37	H. W. Oliver	Mucker	
1/1/37	T. O. Gibbs	Miner	
1/1/37	B. E. Kajohn	Mucker	
1/1/37	*Ike Gorman	Mucker	5/18/37
1/1/37	A. T. Holmberg	Miner	
1/1/37	K. E. Wilson	Miner	
1/1/37	Pickett Hinton	Mucker	
1/1/37	D. G. Ducich	Miner	
1/1/37	M. J. Davis	Miner	
1/1/37	C. W. Moore	Mucker	
1/1/37	O. M. Farnsworth	Mucker	
1/1/37	W. T. Hastie	Mucker	9/6/35
1/1/37	Jack Hill	Miner	
1/1/37	J. A. Windham	Mucker	5/5/37
1/1/37	B. F. Davenport	Mucker	
1/1/37	Van Lang	Mucker	
1/1/37	C. R. Riggs	Mucker	
1/1/37	W. E. Miller	Mucker	
1/1/37	J. D. McIntosh	Mucker	
1/1/37	A. E. Farnsworth	Mucker	
1/1/37	R. G. Macgregor	Mucker	
1/1/37	G. T. Kartchner	Mucker	
1/1/37	C. J. D. Carroll	Mucker	
1/1/37	J. W. Akie	Mucker	
1/1/37	R. R. Langley	Mucker	
1/1/37	M. H. Funderburgh	Mucker	
1/1/37	G. E. Haynie	Mucker	
1/1/37	M. T. Anderson	Mucker	
1/1/37	R. E. Pace	Miner	8/2/37
1/1/37	*Robert Jackson	Mucker	7/31/37
1/1/37	*C. T. Moore	Mucker	5/20/37
1/1/37	Russell Pyeatt	Mucker	
1/1/37	D. M. Spilsbury	Mucker	
1/1/37	J. A. Peccolo	Mucker	
1/1/37	O. C. McMenamy	Mucker	
1/1/37	Paul Watkins	Mucker	
1/1/37	*J. R. Hall	Miner	6/30/37
1/1/37	Jodie Mayberry	Miner	5/11/32
1/1/37	*R. M. Cotten	Mucker	6/24/37
1/1/37	M. W. Ashby	Miner	7/6/37
1/1/37	F. E. Dodd	Mucker	
1/1/37	F. M. Johnson	Mucker	

*Exhibit A, Attached to Stipulation.*

<i>Date Hired</i>	<i>Name</i>	<i>Occupation</i>	<i>If had previous work Last day worked</i>
8/21/37	A. O. Menges	Mucker	
8/21/37	M. S. Ross	Mucker	
8/21/37	M. L. Brown	Mucker	
8/21/37	S. E. Gonzales	Laborer	
8/21/37	J. A. Acuna	Laborer	
8/24/37	Amos West, Jr.	Mucker	
8/24/37	C. W. Dean	Mucker	
8/24/37	L. K. Farnsworth	Mucker	
8/24/37	C. H. Ater	Mucker	
8/24/37	G. E. Dickey	Miner	
8/24/37	L. D. Hickeyman	Mucker	
8/24/37	J. S. Rescorla	Mucker	
8/24/37	Aristeo de Leon, Jr.	Laborer	
8/24/37	Roy Lynch	Miner	8/3/37
8/24/37	H. C. Davis	Mucker	
8/24/37	J. R. Gafford	Mucker	
8/25/37	*S. A. Mason	Miner	8/13/37
8/25/37	*R. C. Herrell	Miner	7/31/36
8/30/37	B. A. Davis	Mucker	
8/30/37	C. M. Thomas	Mucker	
8/30/37	Jesse Hill	Mucker	
8/30/37	M. E. Williamson	Miner	
8/30/37	Tom Riggs	Mucker	
8/30/37	R. R. Howell	Mucker	
8/30/37	E. R. Bowman	Mucker	
8/30/37	R. C. Haby	Mucker	
8/30/37	G. R. Rescorla	Mucker	
8/14/37	Mrs. J. R. Higdon	Cook	
8/16/37	*Rosilla Hill	Nurse	
8/16/37	*Tokie Hudson	Nurse	
8/24/37	*Nina Barr	Nurse	
8/27/37	*Chloen Smith	Hotel maid	
8/31/37	*Susan Boyle	Nurse	
8/12/37	Jewell Lee	Nurse	
9/2/37	E. V. Russell	Mucker	
9/2/37	G. E. Whitehead	Mucker	
9/2/37	S. R. Jeffers	Mucker	
9/2/37	A. P. Baugh	Mucker	
9/2/37	K. C. Emory	Mucker	
9/2/37	D. I. Gartin	Mucker	
9/2/37	W. H. Davis	Mucker	
9/2/37	M. A. McClendon	Mucker	
9/2/37	M. B. Jodd	Mucker	
9/2/37	L. L. Barker	Mucker	
9/2/37	*T. L. Kinney	Mucker	6/19/36
9/3/37	*Pearl L. Wilcox	Librarian	5/18/37
9/9/37	*W. B. Anderson	Mucker	
9/9/37	T. I. Coffman	Mucker	
9/9/37	B. F. Rex	Mucker	
9/9/37	S. W. Davis	Mucker	
9/9/37	G. E. Copeland	Mucker	
9/9/37	L. C. McKnight	Miner	
9/9/37	A. C. Moore	Mucker	
9/9/37	Edward Dupnik	Mucker	
9/9/37	W. B. Gingerich	Miner	
9/9/37	H. C. Goodman	Mucker	7/26/38



**Exhibit A, Attached to Stipulation.**

Date Hired	Name	Occupation	If had previous service: Last day worked
9/3/37	J. P. Henry	Watchman	
9/11/37	Tommie Hodges	Mucker	
9/11/37	W. H. Kiser	Mucker	
9/11/37	R. H. Cook	Mucker	
9/11/37	E. R. Cladwell	Miner	
9/11/37	Lloyd Winchester	Mucker	
9/11/37	W. E. White	Mucker	
9/11/37	B. J. Lemke	Mucker	
9/11/37	L. L. McDaniel	Mucker	
9/11/37	Harry Marks	Electrician helper	
9/11/37	G. R. Hurtado	Laborer	
9/11/37	*G. E. Taylor	Miner	8/24/37
9/11/37	T. E. Schackelford	Mucker	8/18/37
9/14/37	J. C. Harkins	Mucker	
9/14/37	J. M. Graves	Mucker	
9/14/37	C. M. Peterson	Mucker	
9/14/37	C. L. Davis	Mucker	
9/14/37	A. L. Carrigan	Mucker	
9/14/37	L. I. Gatlin	Mucker	
9/14/37	J. H. Hudson	Mucker	
9/14/37	P. M. Bartlett	Mucker	
9/14/37	M. S. Best	Mucker	
9/14/37	Cleofas 'Dugie	Miner	
9/16/37	R. E. Benton	Mucker	
9/16/37	L. H. Luker	Mucker	
9/16/37	Z. B. Newsome	Mucker	
9/16/37	O. T. Pfeifferkorn	Mucker	
9/16/37	Findlay J. Postles	Mucker	
9/16/37	George Barringer	Mucker	
9/16/37	J. H. Tate	Mucker	
9/16/37	E. T. Moore	Mucker	
9/16/37	C. H. Irwin	Miner	
9/13/37	G. E. Keating (Miss)	Stenographer	
9/16/37	R. L. Noble	Mucker	8/31/37
9/16/37	*Milton Carlisle	Mucker	11/27/36
9/18/37	C. A. Wittig	Mucker	
9/18/37	H. B. Siria	Mucker	
9/17/37	H. G. Hardt	Mucker	
9/18/37	H. T. Puckett	Mucker	
9/18/37	H. L. Lott	Mucker	
9/18/37	James Doyle	Mucker	
9/18/37	A. T. Perotti	Mucker	
9/18/37	F. F. Carbajal	Laborer	
9/18/37	R. A. Arquesles	Laborer	
9/2/37	Clara Deskins	Maid	
9/18/37	*J. D. Pierce	Mucker	6/19/37
9/21/37	V. T. Young	Mucker	
9/21/37	C. E. Whittle	Mucker	
9/21/37	H. H. Grenwelge	Mucker	
9/21/37	J. S. Vick	Mucker	
9/21/37	W. R. DeFord	Mucker	
9/21/37	Roy Skarl	Mucker	
9/21/37	E. A. White	Mucker	
9/21/37	L. W. Preston	Mucker	
9/21/37	*J. D. Hodges	Miner	8/31/37
9/18/37	J. A. McClure	Boiler maker	10/15/36

**Exhibit A, Attached to Stipulation.**

<b>Date Hired</b>	<b>Name</b>	<b>Occupation</b>	<b>If had previous work Last day worked</b>
9/15/37	Wiley Stephens	Orderly	
9/23/37	C. A. Raab	Miner	
9/23/37	*R. F. Sprague	Pipeman helper	9/23/37
9/27/37	L. E. Wohler (Miss)	Maid	
9/17/37	G. B. Hayes	Maid	
9/27/37	F. L. Hedrick	Janitor	
9/2/37	*Margaret Connelly	Nurse	
9/2/37	*Margery Jordan	Nurse	
9/23/37	*Susan C. Boyle	Nurse	
10/7/37	Marion Turkey	Mucker	
10/7/37	F. C. Bingham	Mucker	
10/7/37	E. D. Wheeler	Mucker	
10/7/37	Elmer Smith	Mucker	
10/7/37	I. R. Luker	Mucker	
10/7/37	*E. P. Mendoza	Laborer	9/8/37
10/7/37	*B. E. Armstrong	Mucker	6/30/37
10/6/37	*Thelma Hall	Stenographer	9/25/37
10/7/37	M. L. Ryan	Mucker	
10/7/37	B. B. Gambill	Electrician	
10/1/37	Dr. A. L. Henrichsen	Physician	
10/18/37	H. F. Stanton	Physician	
10/22/37	*A. J. Ricketts	Mucker	10/21/37
10/23/37	May E. Morrison	Stenographer	
10/29/37	*Kenneth Crowder	Miner	9/30/37
10/29/37	Harry Murphy	Orderly	
10/29/37	D. H. Hickok	Mining engineer	
10/29/37	Ernest Bright	Orderly	9/17/37
10/29/37	*Margery Jordan	Nurse	
10/31/37	*Floyd Winchester	Mucker	10/29/37
10/31/37	*F. J. Miller	Miner	10/29/37
10/31/37	*W. L. Dean	Miner	10/29/37
11/4/37	H. J. D. Hambrick	Miner	
11/4/37	*K. E. Grimm	Mucker	10/29/37
11/1/37	*Barnie Turner	Mucker	10/29/37
11/1/37	*J. E. Jones	Miner	10/31/37
11/8/37	*O. D. Winkle	Mucker	10/31/37
11/8/37	R. W. Mardon	Orderly	
11/10/37	*F. W. Howell	Miner	10/31/37
11/15/37	*R. M. House	Mucker	10/31/37
11/15/37	Olof Wade	Mucker	10/29/37
11/15/37	*Harvey Medley	Miner	10/31/37
11/15/37	*E. W. Kelly	Mucker	10/30/37
11/15/37	*Melvin Ross	Mucker	10/31/37
11/16/37	Gurney Dunham	Mucker	10/31/37
11/17/37	*J. C. Martineau	Mucker	10/31/37
11/1/37	*J. W. Tidwell	Mucker	10/30/37
11/18/37	J. R. Higdon	Pipeman helper	10/25/37
11/22/37	*M. L. Ryan	Mucker	10/31/37
11/22/37	*H. M. Bailey	Mucker	10/31/37
11/24/37	*V. D. Collum	Miner	11/1/37
12/14/37	*C. A. Saunders	Motorman	12/10/37
12/15/37	*T. L. Herrington	Mucker	12/11/37
12/21/37	*P. C. Llanes, Jr.	Laborer	10/20/37
12/28/37	*Susan C. Boyle	Nurse	
12/16/37	M. A. Bateman	Employment Agent	8/5/37
12/25/37	Edna Murphy	Nurse	

**Exhibit A, Attached to Stipulation.**

Date Hired	Name	Occupation	If had previous service: Last day worked
1/30/37	*G. T. Modesette	Miner	12/29/37
1/30/37	*H. R. Fryke	Miner	12/30/37
1/31/37	*H. M. June	Mucker	12/30/37
1/1/38	*P. R. Brown	Mucker	12/31/37
1/3/38	*J. H. Jett	Mucker	12/21/37
1/3/38	*Gilberto Chavez	Laborer	12/31/37
1/6/38	*J. D. Gilman	Mucker	12/30/37
1/8/38	*J. H. Hatton	Mining engineer	5/25/37
1/10/38	Edward Johnson	Mucker	12/31/37
1/10/38	*A. C. Melton	Miner	12/30/37
1/10/38	*T. J. White	Pipefitter	1/5/38
1/11/38	Florence Camiano	Stenographer	7/31/37
1/12/38	*Lonnie Cloud	Miner	12/21/37
1/8/38	*W. C. Hobgood	Mucker	12/31/37
1/3/38	*D. H. Holt	Miner	12/31/37
1/16/38	Loren R. Peterson	Hotel manager	8/28/30
1/24/38	R. P. Pettijohn	Motorman	12/31/37
1/4/38	*Hilda Andrews	Nurse	
1/23/38	*Margery Jordan	Nurse	
Total number hired.....			2249

\*Appears before each name which has been listed more than once.



**Exhibit B.**

**PHELPS DODGE CORPORATION  
COPPER QUEEN BRANCH, MINES DIVISION**

**EMPLOYEES WHO QUIT OR WERE LAID OFF FROM  
AUGUST 9, 1935 TO JANUARY 27, 1938, INCLUSIVE**

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
8/11/35	F. R. Williams	6/6/19	Miner
8/11/35	R. Y. Garcia	4/25/29	Miner
8/14/35	C. L. Greenwall	6/11/35	Tool Nipper
8/15/35	Ralph Wilson	6/4/34	Mucker
8/9/35	P. J. Cresto	8/2/35	D. D. Helper
8/10/35	William Clemo	9/8/32	Miner
8/12/35	J. J. Higgins	6/23/31	Miner
8/12/35	Henry Costley, Sr.	4/1/14	Motorman
8/13/35	W. B. McLendon	4/25/34	Miner
8/13/35	John Dornik, Jr.	1/15/34	Mucker
8/15/35	Alex Kidd	6/10/35	Watchman
8/15/35	H. L. Ferner	6/10/35	Watchman
8/15/35	E. W. Ranes	6/10/35	Watchman
8/15/35	W. T. Hunter	6/10/35	Watchman
8/15/35	Aaron Kennaugh	6/10/35	Watchman
8/15/35	Pat Beecher	6/10/35	Watchman
8/15/35	W. S. Stodghill	6/10/35	Watchman
8/15/35	Max Wollman	6/10/35	Watchman
8/15/35	Henry Warmington	6/10/35	Watchman
8/15/35	Charles Tschirhart	6/10/35	Watchman
8/15/35	P. J. Kirkland	6/10/35	Watchman
8/15/35	Humphrey Joughin	6/10/35	Watchman
8/15/35	J. J. Jeffery	6/10/35	Watchman
8/15/35	Richard Copeland	6/10/35	Watchman
8/15/35	Charles Wilson	6/10/35	Watchman
8/15/35	J. H. Perry	6/15/35	Watchman
8/15/35	Walter Knowles	6/15/35	Watchman
8/15/35	Albert Erickson	6/15/35	Watchman
8/15/35	J. B. Frank	6/15/35	Watchman
8/15/35	William Werner	6/15/35	Watchman
8/15/35	R. T. Maddern	6/15/35	Watchman
8/15/35	Bob Hargis	6/27/35	Watchman
8/15/35	William Taylor	7/8/35	Watchman
8/15/35	Pearl Wilcox	8/1/35	Librarian
8/26/35	Bostick Williams	6/17/35	Pharmacist
8/26/35	J. F. Hambrick	6/10/35	Miner
8/19/35	W. M. Ratterree	6/10/35	Mucker
8/31/35	E. F. Insley	6/24/35	Mucker
8/23/35	Harrell Hammersley	7/5/35	Mucker
8/31/35	K. E. Estes	7/2/35	Mucker
8/31/35	G. G. Gilman	6/25/35	Mucker
8/30/35	T. C. Conroy	7/25/35	Mucker
8/20/35	Myles Stephenson	6/10/35	Miner
8/16/35	R. F. Hibern	6/13/35	Mucker

*Exhibit B, Attached to Stipulation.*

Date Dropped From Payroll	Name	Last Date Hired	Occupation When Leaving Service
8/30/35	R. E. Martyr	6/13/35	Mucker
8/21/35	Douglas Strawn	5/1/34	Miner
8/30/35	John Bendixen	6/19/35	Mucker
8/16/35	J. C. Tuell	6/24/35	Mucker
8/30/35	Tom McGarry	5/31/35	Mucker
8/16/35	Ernest MacDougall	6/24/35	B. M. Helper
3/30/35	Ralph Brachard	7/11/35	Miner
8/24/35	M. E. Cosgrove	2/24/34	Hos. Orderly
8/30/35	A. T. Hoy	6/3/35	Elect. Helper
8/18/35	Irvine MacDougall	6/24/35	Elect. Helper
8/21/35	Dan Scurlock	11/1/31	Miner
8/22/35	T. S. Dornik	11/9/29	Motor Swamper
8/21/35	F. W. Cornett	10/25/27	Motor Swamper
8/21/35	Sam King, Jr.	8/25/33	Miner
8/31/35	Virgil Nading	12/26/33	Miner
8/21/35	F. H. Hoffman	10/10/28	Miner
8/21/35	E. E. Adams	12/15/30	Miner
8/24/35	Joe Kridel	8/27/34	Miner
8/21/35	Sime Spivey	6/11/34	Mucker
8/24/35	J. F. Johnson	4/2/16	Trackman
8/26/35	C. L. Hansen	4/20/34	Miner
8/27/35	P. R. Schumacher	1/7/32	Miner
8/24/35	G. D. Warsing	11/18/30	Miner
9/3/35	T. C. Hargis	6/3/35	Mucker
9/6/35	W. T. Hastie	2/12/35	Mucker
9/6/35	J. S. Dymock, Jr.	6/10/35	Mucker
9/15/35	Si Cornett	4/1/29	Miner
9/3/35	M. A. Boss	6/26/35	Mucker
9/12/35	T. E. Colford, Jr.	6/26/35	Mucker
9/11/35	W. J. Knox	6/10/35	Miner
9/12/35	E. B. Brooks	6/10/35	Miner
9/15/35	James Graham	12/26/33	Miner
9/15/35	S. J. M. Penberthy	8/9/22	Miner
9/15/35	G. A. Looman	4/1/35	Mucker
9/6/35	Keller Hogan, Jr.	7/10/35	Mucker
9/3/35	Kenneth W. Wells	6/25/35	Mucker
9/6/35	J. P. Monaghan	1/1/27	Cager
9/15/35	J. T. Dunbar	7/1/35	Mucker
9/13/35	A. J. Garnier	9/12/33	Miner
9/3/35	W. C. Adams	6/10/35	Mucker
9/9/35	W. R. Scott	7/1/35	Mucker
9/11/35	G. R. Sinclair	6/10/35	Mucker
9/1/35	G. E. Copeland	7/1/35	Mucker
9/9/35	A. E. Wohlschlegel	6/18/35	Mucker
9/4/35	C. E. Haynes	5/30/34	Welder
9/12/35	H. R. Fisher	6/10/35	B. M. Helper
9/9/35	D. F. Vonk	7/1/33	Hosp. Janitor
9/15/35	Lem Stallings	6/10/35	Watchman
9/15/35	L. H. Moon	6/10/35	Watchman
9/15/35	J. G. Bendixen	6/10/35	Watchman
9/15/35	John Flynn	6/10/35	Watchman
9/15/35	J. H. Atkinson	6/10/35	Watchman
9/15/35	F. E. Barnes	6/10/35	Watchman
9/15/35	B. T. Watkins	6/10/35	Watchman

*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
9/15/35	F. M. Beam	6/10/35	Watchman
9/15/35	E. A. Watkins	6/10/35	Watchman
9/15/35	Harry Brown	6/10/35	Watchman
9/15/35	F. E. Smith	6/10/35	Watchman
9/15/35	G. M. Carlisle	6/10/35	Watchman
9/15/35	F. J. Wasser, Sr.	6/15/35	Watchman
9/15/35	Frank Bonham	6/15/35	Watchman
9/15/35	Albert Erickson	7/8/35	Watchman
9/15/35	E. J. Ikler	6/15/35	Watchman
9/15/35	B. J. Humphrey	6/27/35	Watchman
9/15/35	William Shields	6/27/35	Watchman
9/15/35	Tom Hargis	6/27/35	Watchman
9/15/35	Bob Kinchole	7/10/35	Watchman
9/15/35	W. J. Hunter	6/10/35	Watchman
9/12/35	W. F. Gregory	9/19/28	Miner
9/25/35	Frank Carbajal	6/26/35	Mucker
9/18/35	L. J. Morin	7/31/35	Carp. Helper
9/21/35	C. E. McKelvey	9/5/33	Miner
9/12/35	W. J. Peart	1/29/24	Miner
9/20/35	Dr. W. S. Kitt	8/19/35	Physician
9/20/35	Tom Yelland	8/1/23	Miner
10/3/35	Cleburn Adams	1/15/34	Mucker
10/3/35	Elmer Gardner	11/24/28	Mucker
10/3/35	Ernest White	5/20/35	Miner
10/10/35	R. L. Dublin	7/15/35	Mucker
9/4/35	D. D. W. Davis	6/20/35	Mucker
10/1/35	L. L. Davis	10/1/35	Shafتمان
8/29/35	Edward Woods	10/28/29	Miner
8/17/35	E. J. Pyle	3/5/29	Miner
10/1/35	W. M. Frazier	1/6/06	Hoist Engineer
10/4/35	Caroline Nixon	9/11/35	Hosp. Nurse
10/11/35	J. U. Liggett	7/8/35	Miner
10/12/35	Herbert Gartin	5/31/35	Miner
10/12/35	J. W. Cameron	6/11/35	Mucker
10/12/35	C. E. Catt	6/1/35	Mucker
10/21/35	Alex Henderson	8/8/35	Mucker
10/21/35	D. L. Briscoe	4/8/35	Carpenter
10/25/35	E. W. Johnson	4/8/35	Carpenter
10/21/35	E. D. Hoesch	8/3/34	Machinist
10/16/35	D. J. Zigler	10/3/35	Mucker
10/17/35	T. R. Schultz	2/20/34	Miner
10/26/35	S. L. Stewart	8/31/34	Mucker
10/31/35	G. A. Warner	10/5/33	Miner
10/31/35	C. P. Le Mieux	11/1/31	Const. Foreman
10/31/35	J. C. Chapman	10/16/35	Draftsman
10/31/35	W. M. Miller	6/11/35	Mucker
11/1/35	M. W. McPherson	8/14/35	Miner
11/7/35	Milton Carlisle	6/12/35	Mucker
11/12/35	J. C. Nowlin	12/14/17	Hoist Engineer
11/11/35	A. V. Barrett	9/25/35	Miner
11/22/35	F. P. Stitt	11/24/12	Pipeman
11/16/35	Pearl A. Wilcox	11/2/35	Librarian
11/1/35	U. S. Ratterree	8/29/33	Miner
11/26/35	E. W. Conley	2/13/12	Topman



*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
11/30/35	Caroline Nixon	11/16/35	Hosp. Nurse
12/6/35	J. H. Stivers	7/8/35	Mucker
12/6/35	P. A. Jones	6/10/35	Mucker
12/6/35	L. L. Kuder	6/25/35	Mucker
12/1/35	W. G. Smith	10/31/35	Mucker
12/5/35	J. P. Williamson	11/1/04	Machinist
12/7/35	R. T. Shaw	1/4/26	Miner
12/5/35	H. L. Lasater	4/24/29	Miner
12/5/35	R. T. Graham	10/31/31	Watchman
11/21/35	J. B. Nowlin	6/10/35	Guniteman
12/1/35	M. N. Kuykendall	5/30/34	Miner
12/1/35	N. W. Nicholas	6/11/35	Mucker
11/21/35	J. J. Eggleston	10/3/35	Miner
12/6/35	J. P. Coughlin	10/3/35	Miner
12/7/35	L. M. Gurnett	10/3/35	Mucker
12/12/35	D. M. Sargent	9/26/33	Elect. Helper
12/14/35	C. J. Kuhlmeier	7/8/35	Miner
12/23/35	I. C. Guess	4/4/34	Miner
1/2/36	L. S. Mosier	11/16/35	Mucker
12/21/35	B. F. Brooks	6/6/34	Watchman
1/2/36	H. M. Ziesemer	2/19/19	Engineer
1/7/36	K. C. Moon	10/12/35	Mucker
1/6/36	G. R. Beal	9/9/35	Miner
1/7/36	G. E. Gipson	4/23/23	Miner
1/6/36	J. F. Trammell	2/11/27	Miner
1/7/36	F. G. Smith	8/8/35	Mucker
1/7/36	R. P. Hooks	6/10/35	Miner
1/2/36	G. G. Trent	8/18/35	Mucker
1/7/36	Wendell Merrill	6/24/35	Mach. Helper
1/17/36	A. C. Hansen	11/13/35	Mucker
1/15/36	J. H. Daves	1/9/36	Miner
1/14/36	Buck Scott	6/12/35	Mucker
1/11/36	Caroline Nixon	12/15/35	Nurse
1/21/36	Jack O'Brien	6/17/35	Mucker
1/21/36	P. G. Marks	6/10/35	Mucker
1/24/36	T. L. Kester	10/1/35	Mucker
1/21/36	Maude Little	6/28/35	Hotel Maid
1/31/36	W. M. Nance	11/13/22	Electrician
1/31/36	H. J. Hierl	1/1/13	Pharmacist
1/16/36	Beatrice L. Robinson	10/15/28	Nurse
1/31/36	Marie Brogan	7/1/34	Nurse
2/4/36	D. L. Garcia	8/14/35	Miner
2/5/36	L. C. Smith	12/17/35	Miner
2/5/36	Woodrow Loper	1/11/36	Mucker
2/4/36	C. A. O'Brien	10/12/35	Mucker
2/6/36	H. M. Thomson	6/25/35	Mucker
2/5/36	D. P. Giacoletti	5/28/34	B. M. Helper
2/10/36	Tracy Hudgins	4/16/34	Mucker
2/15/36	Charles Bullard	1/5/23	Truck Driver
2/17/36	F. E. Butler	10/3/35	Mucker
2/17/36	L. B. Williams	8/19/35	Mucker
2/24/36	C. K. Schmidt	7/21/35	Mucker
2/29/36	J. C. Hancock	9/24/35	Mucker
2/28/36	W. A. Stevens	12/5/35	Mucker

*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
2/25/36	A. H. Couch	6/11/35	Mucker
2/25/36	H. L. Martin	2/18/36	Mucker
2/25/36	C. W. Carpenter	1/9/36	Miner
2/25/36	Dave Smith	1/11/36	Mucker
2/25/36	E. E. Sanders	11/22/35	Miner
2/25/36	C. E. Thur	7/29/35	Miner
2/16/36	Mrs. J. E. Jordan	11/1/35	Nurse
2/29/36	Mrs. P. E. Andrews	1/16/36	Nurse
3/6/36	L. L. Phelps	1/17/35	Mucker
3/6/36	Arthur Detloff, Jr.	9/1/35	Mucker
3/6/36	S. D. Bates	2/18/36	Miner
3/6/36	A. A. Sabin	12/11/35	Miner
3/4/36	T. C. Millican	3/21/24	B. M. Helper,
3/11/36	Howard Dennison	12/5/35	Finlay Operator
3/11/36	L. E. Henderson	9/23/35	Miner
3/12/36	Sam Anderson	10/14/29	Miner
3/11/36	H. S. Robbins	3/10/36	Mucker
3/12/36	Henry Costley, Sr.	9/1/35	Motorman
3/23/36	W. E. A. McElwain	9/9/35	Mucker
3/23/36	Jim Vercellino	9/24/35	Mucker
3/30/36	J. F. Johnson	1/7/36	Mucker
3/26/36	P. L. Harris	3/12/36	Mucker
3/31/36	Deck Chandler	3/10/36	Hosp. Orderly
3/12/36	Mrs. E. C. Hill	3/5/36	Nurse
4/3/36	P. W. Kincheloe	1/9/36	Mucker
4/3/36	Hugh Balke	1/21/36	Miner
4/4/36	D. I. Stutzman	1/7/36	Mucker
4/11/36	J. P. Coughlin	12/30/35	Miner
4/3/36	George Matzell	12/14/15	Foreman
4/15/36	Mrs. Jewell Lee	3/28/36	Nurse
4/15/36	Mrs. Doris Knowles	3/23/36	Nurse
4/15/36	Keith Estes	3/23/36	Disp. Clerk
4/15/36	Dr. F. A. Obrock	1/31/36	Physician
4/17/36	W. E. Merrill	6/26/35	Mucker
4/21/36	C. E. Hamilton	3/17/36	Miner
4/21/36	E. T. Eckel	3/31/36	Miner
4/21/36	D. E. Busby	6/18/35	Mucker
4/20/36	Roy Brooks	9/23/35	Miner
4/16/36	A. M. Evans	4/16/36	Mucker
4/18/36	C. B. Spalding	9/1/34	Watchman
4/22/36	R. R. Rawley	11/2/35	Mucker
4/19/36	Clifford Bailey	4/17/36	Janitor
4/28/36	P. B. Crowell	9/5/24	Miner
4/28/36	Pete Ivanovich, Sr.	1/21/36	Miner
4/30/36	Hilary Page	11/23/35	Mucker
4/30/36	Jack Bostwick	2/22/36	Miner
4/25/36	B. F. Waller	1/21/36	Miner
4/22/36	Mrs. Doris Knowles	3/23/36	Nurse
5/1/36	C. R. Mardon	7/29/35	Miner
5/1/36	C. J. Breslin	6/12/35	Mucker
5/4/36	C. W. Flinn	2/26/36	Miner
5/9/36	J. K. Sellers	1/7/32	Assayer
5/13/36	H. J. Schafer	1/5/34	Mucker
5/9/36	W. A. Jones	12/5/35	Miner

*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
5/12/36	Claude Hampton	3/24/36	Miner
5/11/36	L. F. Meyer	2/22/36	Miner
5/9/36	R. B. McCoy	2/22/36	Miner
5/11/36	D. H. Spivey	7/1/35	Miner
5/19/36	G. J. Baranic	1/21/36	Miner
5/19/36	J. H. Cain	2/22/36	Miner
5/25/36	John Benko	6/17/35	Miner
5/30/36	L. A. Hartley	3/3/36	Miner
5/30/36	H. C. Johnson	4/25/34	Miner
5/30/36	K. M. Chapman	9/11/35	Hosp. Orderly
5/24/36	Pearl A. Wilcox	5/18/36	Librarian
5/11/36	Mrs. P. E. Andrews	4/28/36	Nurse
6/2/36	R. T. Parker	1/4/36	Miner
6/5/36	T. A. Silva	11/2/35	Mucker
6/9/36	G. L. Brady	11/13/35	Miner
6/9/36	John Lemon	12/17/35	Mucker
6/9/36	Ray Coomer	6/24/35	Mucker
6/9/36	J. M. Cowan	12/1/35	Miner
6/9/36	A. J. Whelan	5/30/36	Mucker
6/9/36	W. R. Gibson	6/1/32	Electrician
6/12/36	J. L. McDonald	4/25/34	Miner
6/13/36	J. L. McNeil	2/13/36	Miner
6/20/36	L. L. Barker	6/8/34	Mucker
6/16/36	P. S. H. Moore	10/17/35	Mucker
6/13/36	C. J. Short	1/2/36	Mucker
6/26/36	Edward Key	1/4/36	Miner
6/24/36	R. H. Kuhlmeier	7/22/35	Miner
6/26/36	R. H. Shelton	9/23/35	Mucker
6/26/36	M. A. Bonham, Jr.	4/7/36	Mucker
6/26/36	C. R. Gamblin	6/13/36	Mucker
6/26/36	E. R. Bryant	2/1/36	Miner
6/26/36	J. S. Barker	10/10/35	Mucker
6/26/36	E. J. Phillips	10/10/35	Mucker
6/26/36	R. E. Hillman	6/20/35	Miner
6/30/36	John Kries	2/12/35	Miner
6/29/36	W. C. Pope	6/1/31	Miner
6/30/36	C. K. Schmidt	3/11/36	Miner
6/29/36	L. A. Aaron	5/5/36	Miner
6/30/36	L. L. Kuder	1/7/36	Mucker
6/29/36	Bob Gray	6/1/34	Mucker
6/30/36	E. E. Hughes	6/13/35	Mucker
6/30/36	C. W. Carley	7/11/35	Mucker
6/30/36	Dr. Robert Ferguson	1/1/05	Chief Surgeon
6/30/36	K. E. Estes	5/16/36	Disp. Clerk
6/30/36	Mrs. Hilda Andrews	6/6/36	Nurse
6/30/36	Mrs. Jewell Lee	5/28/36	Nurse
6/30/36	Mrs. J. E. Jordan	4/13/36	Nurse
7/2/36	Jess Lucero	9/21/28	Miner
7/1/36	M. W. Merrill	9/27/32	Mach. Helper
7/9/36	C. E. May	12/3/35	Miner
7/8/36	H. H. Johnson	3/24/36	Miner
7/9/36	G. E. Hill	6/24/35	Mucker
7/8/36	Alberto Burrola	4/13/36	Laborer
7/8/36	R. R. Garcia	4/15/36	Laborer



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<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
7/8/36	R. L. Phipps	10/26/35	Miner
7/15/36	Basil Hobgood	7/15/35	Mucker
7/14/36	J. S. Brown	2/22/36	Miner
7/16/36	J. P. McRae	1/8/36	Mucker
7/23/36	P. F. Brown	4/9/36	Mucker
7/22/36	G. M. Porter	5/14/28	Saw Filer
7/25/36	J. S. Dymock, Jr.	6/13/36	Mucker
7/31/36	Alfred Click	4/11/28	Cager
7/31/36	Tom Hargis	9/23/35	Miner
7/31/36	L. F. Miller	2/1/36	Miner
7/31/36	T. J. Salmon	1/21/36	Miner
7/31/36	Henry Costley, Jr.	6/7/34	Mucker
7/31/36	J. D. Grant	12/17/35	Mucker
7/29/36	John Rooney	6/11/34	Miner
7/31/36	J. E. Riggins	4/18/36	Mucker
7/31/36	M. E. Rundell	3/19/34	Mucker
7/31/36	Jack Acord	6/10/35	Miner
7/31/36	R. C. Herrell	3/2/36	Miner
7/31/36	Carl Andrews	6/12/35	Miner
7/31/36	T. A. Martin	6/11/34	Mucker
7/31/36	R. W. Kincheloe	10/4/35	Miner
7/31/36	L. W. Hildreth	6/7/34	Miner
7/31/36	Carmen Moreno	1/3/31	Laborer
7/31/36	R. G. Callison	9/10/34	Pumpman
7/31/36	T. M. Patten	5/14/36	Machinist
7/31/36	L. L. Kope	11/23/35	Fleet. Helper
7/26/36	Mrs. Jewell Lee	7/4/36	Nurse
7/22/36	Mrs. Hilda Andrews	7/13/36	Nurse
7/30/36	D. F. Vonk	7/16/36	Disp. Clerk
8/7/36	F. E. Lapo	5/20/35	Miner
8/6/36	R. D. Hastie	6/24/35	Mucker
8/7/36	B. O. Simmonds	9/27/35	Mucker
8/5/36	Jim Vercellino	7/6/36	Mucker
8/7/36	J. B. Crowell	7/29/35	Miner
8/7/36	J. D. Pierce	6/11/35	Mucker
8/15/36	Harold Webster	4/28/36	Miner
8/14/36	L. C. Clark	6/2/36	Mucker
8/17/36	J. L. Hedgecock	11/13/35	Miner
8/15/36	H. T. Roberts	10/3/35	Mucker
8/17/36	L. H. McCormick	2/12/34	Miner
8/20/36	LeRoy Callison	7/11/36	Mucker
8/20/36	W. T. McSpadden	7/8/36	Mucker
8/20/36	E. R. Pierce	9/20/35	Mucker
8/20/36	John Plavchak	5/12/36	Mucker
8/20/36	Jack Mardon	7/21/36	Mucker
8/20/36	W. G. Smith	1/3/36	Mucker
8/21/36	G. G. Gilman	5/16/36	Mucker
8/22/36	R. H. D'Albini	6/13/35	Finlay Operator
8/21/36	J. O. Clement	3/1/35	Pipeman
8/21/36	R. G. Kelly	10/29/35	B. M. Helper
8/22/36	E. D. Crowell	6/18/36	Welder
8/25/36	Agustin Aguirre	11/28/30	Mucker
8/27/36	Frank Haynes	7/25/35	Mucker
8/26/36	W. L. Henderson	6/17/31	Miner

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<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
8/26/36	R. T. Mallory	4/1/37	Hoist Engineer
8/27/36	F. M. Fergus	3/27/35	B. M. Helper
8/28/36	E. F. Carnes, Jr.	7/9/36	B. S. Helper
8/31/36	W. D. Kirkland	3/31/36	Mucker
8/21/36	T. J. Kennedy	8/20/36	Miner
8/31/36	R. C. James	6/2/36	Mucker
8/31/36	C. G. Dannelley	7/8/35	Miner
8/31/36	Daniel Goode	5/13/36	Mucker
8/31/36	William Carlton	6/24/35	Miner
8/31/36	Westley Daniel	1/19/36	Mucker
8/31/36	J. W. Cameron	6/13/36	Mucker
8/31/36	Douglas Strawn	5/2/36	Handyman
8/29/36	Y. W. Buchanan	1/13/22	Electrician
8/31/36	J. H. Hart, Jr.	4/2/34	Mucker
8/15/36	Josephine Jeffrey	1/12/29	Bookkeeper
8/6/36	Rosilla Hill	7/30/36	Nurse
8/23/36	Hilda Andrews	7/28/36	Nurse
8/1/36	Margaret Spaulding	1/16/36	Hotel Maid
8/30/36	Doris E. Knowles	8/27/36	Nurse
9/4/36	F. E. Baumkirchner	7/9/36	Miner
9/2/36	M. J. Sheridan	6/2/36	Miner
9/4/36	R. R. Schmid	7/21/36	Mucker
9/4/36	G. D. Allen	5/30/36	Mucker
9/4/36	S. A. Rubcic	5/18/35	Mucker
9/1/36	D. P. Allen	5/8/22	Fire Bug
9/1/36	Bennett Greenwall	9/26/23	Miner
9/4/36	J. W. Evans	7/1/35	Miner
9/4/36	G. A. Rylance	6/15/36	Mucker
9/3/36	E. F. Insley	6/2/36	Mucker
9/5/36	W. J. Knox	5/28/36	Miner
9/8/36	W. T. Bendixen	12/17/35	Motor Swamper
9/5/36	J. E. Pickering	5/23/36	Mucker
9/9/36	R. F. Hilburn	5/30/36	Miner
9/5/36	W. P. Sertic	7/9/36	Mucker
9/5/36	R. E. Carpenter	7/10/36	Mucker
9/5/36	W. J. Ferrell	7/21/36	Mucker
9/8/36	J. H. Thomas	7/14/36	Mucker
9/5/36	M. A. Boss	6/13/36	Mucker
9/5/36	John Bendixen	5/26/36	Miner
9/8/36	F. C. Alexander	6/1/36	Miner
9/5/36	Tom McGarry	6/2/36	Miner
9/5/36	D. G. McKinnon	7/21/36	Mucker
9/5/36	H. H. Hunt	7/9/36	Miner
9/8/36	H. E. Story	7/17/36	Machinist
9/5/36	M. J. Dodge	10/26/35	B. M. Helper
9/8/36	T. R. Bell	6/12/35	Miner
9/10/36	S. W. Miller	6/9/36	Miner
9/10/36	G. C. Sanders	8/22/36	Mucker
9/10/36	G. R. Sinclair	6/12/36	Mucker
9/10/36	Fred Landers	8/18/36	Mucker
9/12/36	V. B. Broadus	7/8/36	Mucker
9/11/36	J. B. McPherson	5/30/36	Mucker
9/10/36	H. E. Krohn	8/22/36	Mucker
9/11/36	C. A. Cosgrove	6/17/35	Miner

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<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
9/10/36	B. R. Adams	6/13/36	Mucker
9/11/36	J. A. De Gomez	7/14/26	Mucker
9/10/36	C. L. Morris	5/13/35	Miner
9/14/36	J. C. Andreas	6/2/36	Tool Nipper
9/14/36	J. C. Rogers	9/3/35	Elect. Helper
9/14/36	W. C. Merrill	6/20/35	Elect. Helper
9/15/36	R. P. Treasie	8/22/36	Mucker
9/17/36	W. H. Crane	8/22/35	Miner
9/17/36	G. A. F. Deshler	5/30/36	Miner
9/16/36	C. O. Rosson	9/4/36	Miner
9/19/36	Antonio de la Torre	2/22/36	Miner
9/19/36	W. J. Hill	7/9/36	Mucker
9/4/36	Albert de la Torre	5/14/36	Miner
9/19/36	Constantin Apsouri	5/28/36	Mucker
9/23/36	H. M. Polley	4/9/36	Mucker
9/23/36	C. F. Davenport	8/21/35	Timber Framer
9/22/36	Antonio Garcia	9/4/36	Laborer
9/25/36	M. T. Breland	8/27/36	Mucker
9/28/36	T. E. Colford, Jr.	5/30/36	Mucker
9/28/36	L. V. Hill	1/9/36	Miner
9/30/36	S. D. Morris	1/8/34	Mucker
9/30/36	D. M. Whitlow	8/7/36	Mucker
9/30/36	J. W. Meadows	7/10/35	Motorman
9/30/36	E. N. Webb	8/19/35	Mucker
9/30/36	Alex Henderson	3/5/36	Miner
9/30/36	J. A. Dodge, Jr.	4/21/36	Mucker
9/30/36	Alejandro Ballesteros	4/13/36	Laborer
9/7/36	J. A. Hill	5/1/36	Hotel Clerk
9/4/36	Lovey Jones	7/23/35	Hosp. Cook
9/2/36	Margaret Nicholson	11/22/34	Nurse
9/27/36	Mrs. Hilda Andrews	9/26/36	Nurse
9/30/36	J. E. Schermerhorn	9/8/36	Clerk
10/5/36	R. E. Lee	7/25/36	Miner
10/5/36	M. H. Taylor	7/8/36	Mucker
10/5/36	T. H. Voelker	1/11/36	Mucker
10/6/36	I. W. Gafford	7/9/35	Watchman
10/6/36	V. C. Gentner	9/9/36	Mucker
10/10/36	W. F. Shields	9/29/36	Mucker
10/10/36	W. L. Sholly	5/23/36	Miner
10/12/36	L. J. Kelvey	10/1/36	Mucker
10/12/36	S. S. Foster	9/9/36	Mucker
10/12/36	H. T. Coons	11/23/35	Mucker
10/15/36	J. L. McNeil	7/10/36	Miner
10/15/36	J. A. McClure	1/2/36	Boilermaker
10/12/36	R. C. Mielke	10/1/35	Electrician
10/31/36	H. L. Burkett	9/4/36	Mucker
10/20/36	F. B. Moson, Jr.	4/16/36	Mucker
10/14/36	C. L. Greenwall	1/21/36	Mucker
10/21/36	C. E. Wootan	9/16/36	Miner
10/22/36	John Lemon	7/10/36	Mucker
10/21/36	L. C. Hall	3/31/36	Mucker
10/27/36	J. H. Henderson	7/1/35	Miner
10/26/36	L. E. Harris	12/17/35	Miner
10/21/36	R. R. Roberts	10/15/36	Miner



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Date Dropped From Payroll	Name	Last Date Hired	Occupation When Leaving Service
10/26/36	Arnold Carbajal	9/8/36	Laborer
10/27/36	A. J. Bear	10/1/36	Mucker
10/27/36	Bill Trezise	9/10/36	Mucker
10/26/36	W. M. Cook	10/8/36	Mucker
10/31/36	L. M. Jones	9/1/36	Miner
10/31/36	J. S. Barragon	7/1/24	Nipper
10/31/36	L. L. Johnson	9/9/36	Mucker
10/31/36	C. E. Catt	6/11/36	Guniteman
10/31/36	John McGarry	5/31/35	Mucker
10/31/36	M. K. Jean	1/9/36	Mucker
10/31/36	D. G. Zigler	2/16/36	Mucker
10/31/36	H. R. Kees	2/26/36	Miner
10/31/36	G. A. Looman	4/26/36	Miner
10/31/36	E. D. Miller	5/30/36	Mucker
10/31/36	W. A. Andrews	5/26/36	Mucker
10/31/36	D. W. Merrill	9/25/33	Boilermaker Helper
10/2/36	Doris E. Knowles	10/1/36	Nurse
10/10/36	Mrs. J. E. Jordan	10/1/36	Nurse
10/15/36	Mrs. C. W. Wilcox	10/1/36	Librarian
10/1/36	Geo. B. Lyman	1/13/19	Mining Engineer
11/5/36	T. D. Bailly	10/17/36	Mucker
11/5/36	J. N. Demas	10/17/36	Miner
11/5/36	Emol Cavaness	10/29/36	Miner
11/5/36	T. L. Jordan	8/24/36	Blacksmith
11/5/36	A. F. Oglesby	9/26/36	Mucker
11/14/36	Bart Green	5/21/36	Mucker
11/14/36	W. R. Brown	4/21/36	Mucker
11/16/36	E. G. Chambers	8/26/36	Mucker
11/16/36	D. G. Thorne	4/22/36	Electrician
11/7/36	A. B. McClure	10/6/33	Janitor
11/15/36	Carl Henderson	3/12/36	Miner
11/12/36	G. D. Crowley	7/13/18	Pump Foreman
11/25/36	J. L. Gomez	6/11/35	Miner
11/25/36	W. A. Hayes	8/15/36	Mucker
11/25/36	F. L. Knorschild	9/30/36	Carpenter Helper
11/26/36	F. M. Hickman	4/22/36	Machinist
11/26/36	Valentine Payne	9/3/36	Mucker
11/30/36	D. T. Hunt	11/13/35	Mucker
11/30/36	G. L. Weatherford	1/7/36	Mucker
11/30/36	M. O. Evans	5/22/35	Mucker
11/1/36	Edward Schaefer	7/28/36	Miner
11/30/36	J. A. Whitfield	7/15/35	Mucker
11/30/36	L. F. Hawkins	10/1/36	Miner
11/30/36	W. R. Phillips	12/8/35	Mucker
11/30/36	W. T. Edwards	8/29/36	Mucker
11/30/36	A. P. Jenkins	3/5/36	Mucker
11/30/36	J. D. Jenkins	2/18/36	Mucker
11/30/36	W. M. Skaggs	5/16/36	Mucker
11/27/36	Milton Carlisle	6/23/36	Mucker
11/30/36	Dr. R. Odiorne	7/15/35	Mucker
11/30/36	J. E. Bullock	8/27/36	Mucker
11/30/36	J. F. Kennev	1/12/34	Mucker
11/30/36	E. J. Frank	12/13/35	B. M. Helper
11/30/36	James Simpson	10/12/35	B. M. Helper

Tightly Bound

**Exhibit B, Attached to Stipulation.**

<b>Date Dropped From Payroll</b>	<b>Name</b>	<b>Last Date Hired</b>	<b>Occupation When Leaving Service</b>
11/30/36	J. I. Garcia	4/15/36	Laborer
11/21/36	Lily White	6/12/34	Sterzographer
12/4/36	I. H. Miller	10/3/36	Mucker
12/1/36	W. H. Clark	11/12/36	Mucker
12/4/36	J. A. Andrews	7/14/36	Mucker
12/1/36	C. E. Jarnigan	11/7/36	Miner
12/2/36	J. F. Hill	5/30/36	Mucker
12/3/36	E. W. Johnson	10/10/36	Miner
12/7/36	Joe Vezzetti	8/13/36	Miner
12/7/36	Herbert Gerdes	6/14/35	Mucker
12/9/36	O. R. Smith	8/20/36	Mucker
12/14/36	N. J. Highfield	9/1/36	Mucker
12/15/36	W. F. Ray	10/19/36	Miner
12/14/36	J. E. Massie	8/24/35	Mucker
12/15/36	R. V. Tate	7/21/36	Mucker
12/14/36	D. J. Shea	12/2/36	Mucker
12/15/36	LeRoy Callison	11/4/36	Mucker
12/8/36	O. S. Hulsey	9/22/36	Mucker
12/16/36	H. S. Hatch	8/29/36	Miner
12/15/36	G. F. Garcia	12/4/36	Laborer
12/16/36	Vincent Smith	6/13/34	Pipeman
12/19/36	S. C. Brooks	6/8/34	Motorman
12/23/36	L. O. Thompson	12/16/36	Mucker
12/31/36	Theodore Brooks	11/17/36	Hosp. Orderly
12/30/36	A. P. Bendixen	2/12/35	Mucker
12/31/36	F. E. Williams	11/15/35	Miner
12/31/36	Jack Jennings	4/30/36	Miner
12/31/36	P. W. Newbury	7/30/25	Hoist Engineer
12/31/36	C. B. French	9/30/36	Carpenter
12/30/36	W. T. Lake	3/1/35	Pipeman
12/15/36	J. F. Henderson, Jr.	12/14/36	Electrician
12/31/36	M. L. Cruz	8/8/35	Laborer
1/4/37	O. C. Stanbrough	11/21/36	Miner
1/4/37	J. B. McPherson	12/21/36	Mucker
1/5/37	M. E. Lane	12/7/36	Mucker
1/4/37	James Dearing	5/7/36	Mucker
1/4/37	W. P. Sertic	12/21/36	Mucker
1/2/37	E. A. Riley	6/13/34	Mucker
1/1/37	C. W. Wittstruck	12/28/36	Miner
1/5/37	M. L. Cruz	8/8/35	Laborer
1/9/37	A. C. Jones	9/15/36	Mucker
1/7/37	R. M. Furr	3/2/36	Miner
1/6/37	T. A. Jeffries	7/8/35	Mucker
1/7/37	Monroe McClintock	9/27/35	Mucker
1/9/37	A. L. Taylor	6/10/36	Miner
1/6/37	Earl Barnes	12/9/36	Miner
1/9/37	J. C. Tucker	12/16/36	Miner
1/9/37	C. G. Wood	10/5/36	Chemist
1/11/37	A. C. Stuart	9/9/36	Miner
1/13/37	R. N. Haynes	3/4/36	Tool Nipper
1/13/37	J. W. Dye	7/22/35	Mucker
1/13/37	L. B. Cary	3/8/35	Mucker
1/13/37	E. T. Allen	3/17/36	Mucker
1/13/37	F. H. McCulloch	7/10/36	Mucker



*Exhibit B, Attached to Stipulation.*

Date Dropped From Payroll	Name	Last Date Hired	Occupation When Leaving Service
1/12/37	C. W. Carley	10/17/36	Miner
1/12/37	C. E. Doss	8/20/36	Mucker
1/13/37	F. M. Thompson	5/9/36	Mucker
1/13/37	O. C. Kelly	5/5/36	Mucker
1/13/37	L. B. Keith	8/13/36	Mucker
1/14/37	W. F. Hartin	10/3/36	Mucker
1/15/37	G. N. Williams	6/25/35	Mucker
1/15/37	S. J. Hoener	6/11/35	Mucker
1/15/37	P. W. Keating	8/26/35	Miner
1/15/37	W. M. Taylor	10/4/35	Mucker
1/16/37	J. H. Martineau	9/1/36	Mucker
1/16/37	V. F. Wojick	1/7/36	Clerk
1/18/37	William Miller, Jr.	6/11/35	Miner
1/20/37	I. R. Van Cleve	11/17/36	Miner
1/19/37	Archie Burns	1/11/37	Mucker
1/19/37	M. W. Bouldin	1/13/37	Miner
1/19/37	J. L. O'Brien	10/31/36	Mucker
1/20/37	Ray Coomer	7/11/36	Miner
1/19/37	K. E. Lund	1/4/37	Miner
1/20/37	L. A. Webb	1/7/37	Mucker
1/19/37	J. A. Horvath	11/19/36	Miner
1/20/37	F. D. Wooley	12/18/36	Mucker
1/20/37	Maitland Brereton	10/1/09	Clerk
1/26/37	J. H. Hell	11/17/36	Miner
1/25/37	T. W. McSpaden	8/31/36	Mucker
1/25/37	J. P. Walters	1/5/37	Mucker
1/24/37	John Finney	6/30/17	Watchman
1/27/37	G. B. Beard	9/24/36	Mucker
1/31/37	Bill Younger	10/8/36	Mucker
1/31/37	Cleo Evans	9/19/36	Mucker
1/31/37	W. H. Clark	12/14/36	Mucker
1/31/37	Roy Lynch	9/29/36	Mucker
1/31/37	C. H. Salmons	12/16/36	Miner
1/31/37	Frank Slaten	12/9/36	Mucker
1/31/37	C. M. Mills	7/8/36	Mucker
1/31/37	Herbert Vivian	7/2/32	Miner
1/31/37	C. E. Vandervort	7/10/36	Mucker
1/31/37	H. P. Dean	10/31/36	Mucker
1/31/37	W. T. Edwards	12/14/36	Mucker
1/31/37	D. H. Spivey	10/13/36	Miner
1/31/37	R. T. Howell	8/20/36	Mucker
1/31/37	R. R. R. Rowan	8/26/36	Mucker
1/31/37	H. F. Buntin	8/26/36	Mucker
1/31/37	A. A. Shelton	5/28/36	Mucker
1/31/37	B. D. Wimberley	10/10/36	Miner
1/31/37	T. L. Dunlap	11/3/36	Mucker
1/31/37	E. B. Munson	1/4/37	Tool Nipper
1/31/37	S. W. McNair	1/8/37	Miner
1/24/37	Hilda T. Andrews	10/13/36	Nurse
1/4/37	K. E. Estes	12/21/36	Disp. Clerk
1/24/37	Caroline Nixon	1/22/37	Nurse
1/25/37	Rosilla Hill	1/16/37	Nurse
1/26/37	Nina Barr	1/22/37	Nurse
2/4/37	L. P. Johnson	1/23/37	Miner



## Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	Name	Last Date Hired	Occupation When Leaving Service
2/5/37	A. R. Olney	10/31/36	Miner
2/5/37	C. R. Lewis	1/23/37	Miner
2/5/37	W. G. Brown	7/28/36	Mucker
2/5/37	C. L. Smythe	1/27/37	Miner
2/8/37	I. D. McCoy	11/21/36	Miner
2/8/37	Pedro Caripo	1/26/37	Laborer
2/10/37	J. E. Dawson	7/11/35	Watchman
2/13/37	J. A. Smith	12/21/36	Miner
2/13/37	H. L. Judd	8/13/36	Mucker
2/12/37	W. F. Slater	5/12/36	Shaftman
2/11/37	John Atkinson	12/1/10	Surface Foreman
2/16/37	Herman Orthiesse	9/15/36	Mucker
2/16/37	William Bednorz	8/25/33	Miner
2/16/37	J. E. Mertaugh	9/24/35	Mucker
2/17/37	U. T. Link	6/25/35	Motorman
2/17/37	C. G. Medley	1/21/37	Miner
2/5/37	Edith Wiley	2/1/37	Nurse
2/11/37	Lee Griffin	1/12/37	Porter
2/19/37	J. G. Butler	3/21/29	Miner
2/19/37	John Mazurko	5/21/36	Mucker
2/20/37	J. J. Gordon	8/29/36	Mucker
2/20/37	E. D. Johnson	1/29/37	Pipeman
2/20/37	W. N. Hunt	5/12/36	Miner
2/20/37	V. B. Ackerson	11/21/36	Mucker
2/22/37	C. E. Frizzell	1/13/37	Miner
2/25/37	R. J. Cravey	9/15/36	Miner
2/25/37	C. W. Weathers	8/27/36	Mucker
2/25/37	C. E. Coleman, Jr.	2/13/37	Janitor
2/27/37	A. E. Schupbach	9/1/36	Mucker
2/27/37	W. E. Votaw, Jr.	12/9/36	Miner
2/27/37	R. O. Hickman	2/8/37	Mucker
2/27/37	J. W. Wilson	3/5/36	Mucker
2/26/37	J. C. Shultz	1/15/37	Mucker
2/26/37	D. J. Williams	2/18/37	Miner
2/27/37	C. L. Nutter	2/17/37	Miner
2/27/37	H. W. Thompson	9/26/36	Mucker
2/35/37	Charles White	5/14/36	Miner
2/27/37	G. W. Scott	2/5/37	Miner
2/21/37	Margery Jordan	2/2/37	Nurse
2/27/37	H. J. Hierl	1/29/37	Pharmacist
2/6/37	B. L. Key	1/28/37	Nurse
2/5/37	C. J. Smith	1/28/37	Maid
2/23/37	K. E. Estes	2/22/37	Disp. Clerk
2/14/37	T. T. Brooks	1/25/37	Hosp. Orderly
2/24/37	T. T. Brooks	2/23/37	Hosp. Orderly
2/28/37	Edward Matsen	5/9/36	Miner
2/28/37	Woodrow Walters	9/2/36	Mucker
2/28/37	G. L. Allen	1/21/37	Miner
2/28/37	E. H. Stoner	12/13/36	Miner
2/28/37	B. O. Johnson	12/16/36	Miner
2/28/37	T. W. Bignell	12/16/36	Miner
2/28/37	M. F. Powers	12/1/36	Miner
2/28/37	O. E. Edwards	12/13/37	Miner
2/28/37	J. C. Oquinn	5/7/36	Miner

## Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	Name	Last Date Hired	Occupation When Leaving Service
2/28/37	H. C. Miles	7/8/35	Miner
2/28/37	W. A. Graham	8/29/36	Mucker
2/28/37	R. P. Peck	11/20/36	Mucker
2/28/37	I. D. McCoy	2/12/37	Miner
2/28/37	C. A. Adams	11/19/36	Miner
2/28/37	H. S. Kennedy	8/29/36	Mucker
2/28/37	B. F. Jacobson	10/19/36	Mucker
2/28/37	J. D. Whittle	9/22/36	Mucker
2/28/37	George Wilson	1/23/37	Miner
2/28/37	J. M. Ochoa	8/23/36	Laborer
2/28/37	T. H. Conger	1/29/37	Electrician
3/1/37	C. L. Corbett	5/13/35	Miner
3/1/37	J. P. Stapley	2/17/37	Miner
3/5/37	S. J. Hoener	2/13/37	Miner
3/5/37	F. W. D'Albini	4/4/34	Miner
3/8/37	Jack Hawn	2/8/37	Miner
3/8/37	E. F. Enos	10/1/36	Mucker
3/9/37	W. W. Adams	9/15/36	Mucker
3/9/37	Steve Davids	1/30/37	Miner
3/9/37	R. E. Diviney	1/30/37	Miner
3/8/37	E. C. Lytle	1/2/35	Miner
3/9/37	E. C. Gregory	3/1/37	Boilermaker
3/9/37	R. E. McKinnon	12/1/36	Miner
3/10/37	N. J. Miller	12/21/36	Miner
3/10/37	H. C. Miller	1/28/37	Miner
3/10/37	Carl Fuller	1/12/38	Foreman
3/10/37	F. I. Lindau	3/8/37	Draftsman
3/1/37	R. L. Whitlow	10/1/35	Mucker
3/13/37	J. E. Werner	6/17/36	Mucker
3/12/37	P. C. Lawless	2/24/37	Miner
3/16/37	R. C. Dickey	10/8/36	Coniteman
3/16/37	F. H. McCulloch	1/21/37	Mucker
3/16/37	H. L. Burkett	3/3/37	Mucker
3/16/37	C. F. Shields	10/22/35	Mucker
3/17/37	J. L. Beiler	3/8/37	Miner
3/12/37	A. W. Furr	1/25/34	Miner
3/19/37	I. W. Carpenter	2/17/37	Miner
3/19/37	E. M. Broadus	5/13/36	Mucker
3/19/37	J. A. Hoffman	1/30/37	Miner
3/18/37	J. P. Carter	1/21/37	Miner
3/23/37	George Snodgrass	2/22/37	Miner
3/23/37	A. A. Scheffler, Jr.	9/3/36	B. M. Helper
3/22/37	William Minsey	2/6/31	Hotel Clerk
3/23/37	E. R. Harmon	11/7/36	Mucker
3/25/37	S. C. Merkley	9/9/36	Mucker
3/24/37	W. H. Harris	1/30/37	Miner
3/25/37	F. C. Cawthon	10/13/36	Miner
3/29/37	A. J. Hallsted	1/7/37	Mucker
3/29/37	J. W. Muldoon	2/15/37	Mucker
3/29/37	L. W. Parten	8/20/36	Mucker
3/30/37	P. B. Smith	3/15/37	Mucker
3/29/37	R. G. Liebmam	2/26/37	Miner
3/30/37	J. J. Martin	3/3/37	Miner
3/30/37	A. E. Curler	9/15/36	Mucker



## Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	Name	Last Date Hired	Occupation When Leaving Service
3/30/37	C. E. Catt	12/29/36	Mucker
3/30/37	Floyd Host	1/21/37	Miner
3/30/37	B. L. Kinnard	1/30/37	Miner
3/30/37	G. K. Housley	12/6/36	Miner
3/30/37	A. A. Hufstutler	10/17/36	Mucker
3/30/37	Gordon Hodges	1/11/36	Mucker
3/30/37	G. A. Looman	11/4/36	Miner
3/30/37	J. P. Townsend	5/11/36	Mucker
3/30/37	L. G. Stacey	9/29/36	Mucker
3/11/37	James Coleman	1/28/37	Hosp. Orderly
4/1/37	Chris Klineburger	3/31/36	Watchman
4/5/37	G. I. Richman	1/4/36	Mucker
4/2/37	L. J. de Montegre	3/3/37	Miner
4/5/37	T. J. Salmon	1/22/37	Miner
4/5/37	T. A. Crutsinger	5/13/36	Mucker
4/5/37	R. L. Simpson	9/23/35	Mucker
4/2/37	J. W. Congrove	2/19/37	Miner
4/2/37	R. L. Cuyler	2/26/37	Miner
4/5/37	J. N. Oliver	2/13/36	Miner
4/7/37	W. C. Miller	12/22/36	Mucker
4/8/37	Edward Flynn	4/9/26	Miner
4/9/37	H. B. Staas	2/5/37	Miner
4/9/37	J. E. Sherley	2/19/37	Miner
4/9/37	F. R. Dawson	3/22/37	Miner
4/8/37	Robert Simpson	3/22/37	Miner
4/1/37	E. N. Pezzebaker	3/13/35	Geologist
4/9/37	A. W. Constantine	2/26/37	Miner
4/9/37	J. R. Turnbull	2/9/37	Miner
4/9/37	F. A. O'Brien	2/17/37	Miner
4/12/37	L. B. Colham	3/1/37	Miner
4/13/37	F. H. Heckler	1/23/37	Mucker
4/12/37	S. G. Beckworth	1/30/37	Miner
4/12/37	J. A. Morrow	1/20/37	Miner
4/12/37	H. E. Barker	10/30/23	Blacksmith
4/19/37	A. E. Elliott	7/8/35	Miner
4/16/37	C. E. Carothers	1/26/37	Miner
4/5/37	L. M. Pastorius	3/24/37	Miner
4/20/37	F. T. Baxter	11/10/36	Mucker
4/17/37	L. S. Armstrong	11/23/35	Mucker
4/19/37	V. B. Ackerson	3/2/37	Mucker
4/19/37	Ira Hartman	4/17/37	Mucker
4/21/37	H. A. Hall	3/10/36	Motorman
4/21/37	J. P. McRae	9/2/36	Mucker
4/23/37	A. L. Duncan	3/29/37	Miner
4/23/37	W. S. Lynch	1/7/37	Tool Nipper
4/23/37	Beldon Smith	3/1/37	Mucker
4/21/37	Andrew Angle	12/1/36	Miner
4/22/37	J. M. Karvonen	2/22/37	Miner
4/23/37	Melvin Stockman	12/9/36	Miner
4/27/37	J. H. Henderson	10/31/36	Miner
4/28/37	J. L. White	3/5/37	Miner
4/28/37	L. E. Rivera	4/15/27	Laborer
4/30/37	F. O. Lott	12/16/36	Mucker
4/29/37	C. D. Whelan	5/16/24	Miner



**Exhibit B, Attached to Stipulation.**

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
4/30/37	Roy O'Leary	4/28/36	Motorman
4/30/37	E. R. Hill	8/7/35	Mucker
4/30/37	C. W. Carley	2/4/37	Miner
4/30/37	Earl Carnel	10/16/29	Mucker
4/30/37	A. R. Crawford	10/1/36	Mucker
4/29/37	R. R. Corp	12/9/36	Miner
4/30/37	N. C. Warhurst	2/17/37	Miner
4/30/37	E. D. Dickerson	3/1/37	Miner
4/29/37	A. J. Combel	2/14/35	Mach. Helper
4/4/37	K. E. Estes	3/20/36	Disp. Clerk
4/23/37	E. S. Lucas	1/8/37	Hosp. Janitor
4/24/37	Margery Jordan	3/3/37	Nurse
4/24/37	Doris E. Knowles	4/23/37	Nurse
5/1/37	C. G. Woodworth	3/8/37	Mucker
5/1/37	D. A. Page	4/21/37	Miner
5/2/37	Richard Nitsch	6/25/12	Repeman
5/4/37	W. R. Beauford	4/28/37	Mucker
5/4/37	J. L. Peck	10/6/36	Mucker
5/5/37	J. A. Windham	2/18/36	Mucker
5/9/37	D. M. Whitlow	2/11/37	Mucker
5/9/37	John Snyder	12/18/36	Miner
5/9/37	R. E. Fletcher	2/15/37	Mucker
5/7/37	C. W. Ravenscraft	2/17/37	Miner
5/12/37	C. W. Brown	3/19/37	Miner
5/12/37	A. B. Willemoes	3/5/37	Mucker
5/12/37	G. F. Buttler	4/21/36	Mucker
5/11/37	R. L. Huntley	4/27/37	Mucker
5/13/37	J. C. Gonzales	4/15/37	Laborer
5/15/37	C. B. Valenzuela	3/22/37	Laborer
5/10/37	Robert Meier	4/27/37	Clerk
5/17/37	R. W. Hamel	11/10/36	Miner
5/18/37	T. L. Kinndy	5/2/36	Mucker
5/17/37	A. B. Teran	4/2/37	Laborer
5/20/37	C. T. Moore	5/16/36	Mucker
5/21/37	H. O. Williams	2/11/37	Miner
5/21/37	H. F. Ramsey	2/19/37	Miner
5/25/37	J. H. Hatton	2/6/37	Mining Engineer
5/25/37	F. M. Knoll	4/6/37	Mucker
5/25/37	E. W. Markham	1/13/37	Carpenter
5/24/37	Melecio Robles	4/24/37	Laborer
5/26/37	Howard Dennison	12/7/36	Convey Operator
5/26/37	W. A. Carnahan, Jr.	2/16/37	Mucker
5/27/37	L. O. Becroft	7/9/36	Mucker
5/29/37	E. F. Allen	2/5/37	Miner
5/29/37	Otho Fowler	2/16/36	Miner
5/31/37	O. M. Dennis, Jr.	5/12/37	Mucker
5/9/37	Margery Jordan	5/1/37	Nurse
5/17/37	Nina Barr	5/5/37	Nurse
5/20/37	J. W. Patterson	4/24/37	Janitor
5/31/37	F. F. Cosper	3/3/37	Miner
5/31/37	E. L. Blalock	11/10/36	Mucker
5/31/37	R. D. Parker	3/15/36	Mucker
5/31/37	I. V. Cook	3/22/37	Miner
5/31/37	E. H. Childers	1/8/37	Mucker

*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
5/31/37	H. B. Cares	2/13/37	Miner
5/31/37	R. E. Davenport	2/13/37	Mucker
5/31/37	L. M. Berry	2/15/36	Mucker
5/31/37	C. L. Bragg	5/9/36	Miner
5/31/37	Lester Skousen	9/9/36	Mucker
5/31/37	W. F. Parker	9/15/36	Mucker
5/31/37	W. E. Haygood	4/28/36	Mucker
5/31/37	M. R. Bigham	8/29/36	Mucker
5/31/37	B. O. Simmonds	11/30/36	Mucker
5/31/37	P. L. Smith	1/11/37	Mucker
5/31/37	W. S. Crow	11/19/36	Miner
5/31/37	Cliff Cannon	1/11/37	Miner
5/31/37	O. L. Roberts	2/15/37	Miner
5/31/37	H. H. Fullenwider	2/16/37	Miner
5/31/37	H. J. Fullenwider	2/16/37	Miner
5/31/37	Fred Randolph	3/19/37	Miner
5/31/37	Armando Chavez	9/22/36	Laborer
5/31/37	Juan Bernal	9/23/36	Laborer
6/2/37	J. J. Feeney	5/19/37	Mucker
6/2/37	O. D. Haynie	5/9/36	Mucker
6/4/37	C. D. Cotton	2/16/37	Miner
6/8/37	J. W. Lynch	4/6/37	Miner
6/7/37	W. M. Dinsmore	3/22/37	Miner
6/7/37	R. G. Liebmann	5/7/37	Miner
6/7/37	L. P. Anderson	1/30/37	Miner
6/8/37	G. J. Simley	1/29/37	Painter
6/10/37	R. E. Martyr	1/2/36	Mucker
6/8/37	C. S. Bennett	11/17/36	Miner
6/9/37	D. N. Holloway	5/5/37	Miner
6/11/37	James Costello	4/14/37	Miner
6/12/37	M. N. Besich	6/3/37	Miner
6/10/37	L. M. Hall	8/25/36	Miner
6/10/37	J. C. Mathis	2/15/37	Mucker
6/15/37	C. H. Johnston	4/16/36	Miner
6/15/37	E. E. Harris	3/13/36	Mucker
6/15/37	G. R. Jackson	4/28/37	Mucker
6/16/37	K. K. Howell	1/18/37	Miner
6/19/37	R. O. Hickman	10/4/35	Mucker
6/18/37	A. T. Anderson	2/18/36	Miner
6/19/37	J. D. Pierce	8/25/36	Motorman
6/17/37	R. C. Wood	9/19/36	Miner
6/21/37	John Smith	6/14/35	Mucker
6/19/37	John Peterson	2/5/37	Miner
6/6/37	Margaret E. Connelly	6/5/37	Nurse
6/22/37	A. M. Allen	10/23/36	Mucker
6/22/37	T. R. Blair	3/10/37	Mucker
6/23/37	C. W. Loyd	6/4/37	Miner
6/24/37	D. C. Johnston	3/22/37	Miner
6/24/37	R. M. Cotton	9/9/36	Mucker
6/24/37	J. J. Ward	3/19/37	Miner
6/24/37	R. E. Burns	1/11/37	B. M. Helper
6/25/37	J. H. Irwin	6/19/35	Mucker
6/29/37	Millard Atkins	11/12/36	Miner
6/29/37	J. C. Kelly	3/1/37	Miner



## Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	Name	Last Date Hired	Occupation When Leaving Service
6/29/37	Ambrose Latimer	2/18/37	Miner
6/30/37	B. R. Jones	5/27/37	Mucker
6/30/37	M. M. Wright	7/10/35	Mucker
6/30/37	J. M. Sanders	4/28/37	Mucker
6/30/37	Edith B. Wiley	6/1/36	Nurse
6/18/37	David Vonk	6/4/37	Disp. Clerk
6/30/37	J. R. Hall	9/5/36	Mucker
6/30/37	Lloyd Votaw	12/9/36	Miner
6/30/37	H. O. Thornton	3/3/37	Mucker
6/30/37	G. L. Elston	2/13/37	Mucker
6/30/37	W. H. Green	11/12/36	Mucker
6/30/37	Carl Andrews	4/30/37	Miner
6/30/37	Ernest Snyder	12/29/36	Miner
6/30/37	L. W. Brown	5/18/37	Miner
6/30/37	G. S. Nelson	1/8/37	Mucker
6/30/37	R. D. Nielson	7/12/35	Mucker
6/30/37	D. T. Hunt	1/8/37	Miner
6/30/37	R. M. Elston	4/2/37	Miner
6/30/37	J. W. Muldoon	4/6/37	Mucker
6/30/37	J. E. McClain	4/9/37	Miner
6/30/37	B. E. Armstrong	9/28/36	Mucker
6/30/37	L. H. Sevey	1/28/37	Miner
6/30/37	A. V. Massett	1/7/37	Mucker
6/30/37	Wade Lacey	2/13/37	Miner
6/30/37	O. E. Dillon	3/1/37	Miner
6/30/37	Eloise Giffen	5/5/37	Stenographer
7/2/37	J. W. Lloyd	5/13/37	Mucker
7/1/37	C. M. Carley	6/21/37	Mucker
7/1/37	A. W. Fuller	6/13/35	Mucker
7/2/37	G. D. Peters	4/30/37	Miner
7/2/37	A. G. Lewis	4/9/37	Miner
7/3/37	G. R. Johnson	2/16/37	Mucker
7/1/37	M. C. Alcantar	4/2/37	Labower
7/1/37	M. J. Cosgrove	9/15/15	Jigger Boss
7/7/37	T. J. Kearney	10/1/36	Mucker
7/7/37	R. L. Hodges	3/29/37	Miner
7/7/37	L. J. O'Neill	5/20/37	Miner
7/8/37	L. Anderson	3/22/37	Miner
7/8/37	Ike Gorman	12/30/36	Mucker
7/9/37	R. F. Hobbs	9/1/36	Miner
7/8/37	R. F. J. Wicke	5/26/36	Mucker
7/12/37	C. W. Weathers	6/1/37	Miner
7/13/37	A. J. Holland	8/29/36	Miner
7/14/37	J. M. Dunn	5/7/36	Mucker
7/13/37	D. G. McNeill	6/22/37	Mucker
7/13/37	R. O. Skinner	3/26/37	Miner
7/13/37	D. L. Jarvis	5/24/36	Miner
7/16/37	C. C. Pickard	6/1/37	Mucker
7/16/37	R. F. Conway	6/3/37	Mucker
7/19/37	E. A. Fehring, Jr.	4/6/37	Mucker
7/19/37	C. W. Loyd	7/7/37	Miner
7/20/37	J. E. Grant	4/2/37	Truck Driver
7/22/37	F. A. Montgomery	9/10/36	Miner
7/26/37	Al Smith	6/13/35	Mucker



*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
7/20/37	C. W. Large	5/26/37	Mucker
7/21/37	C. F. Mechler	6/2/37	Miner
7/22/37	H. E. Behrer	4/20/37	Mucker
7/23/37	P. R. Abril	5/29/37	Laborer
7/22/37	H. W. Lynch	3/12/37	Mucker
7/24/37	James Dearing	1/22/37	Miner
7/24/37	L. C. Clark	5/26/37	Mucker
7/23/37	F. E. Nuno	2/15/37	Laborer
7/29/37	R. I. Woodworth	3/5/36	Mucker
7/29/37	J. E. Linsley	12/16/36	Miner
7/28/37	W. R. Phillips	4/20/33	Mucker
7/28/37	W. E. Tomkinson	2/12/37	Tool Nipper
7/31/37	Florence Peters	7/16/34	Stenographer
7/3/37	Edward Burke	6/20/37	Hosp. Orderly
7/18/37	Chloeon Smith	5/31/37	Maid
7/28/37	Tokie Hudson	7/14/37	Nurse
7/29/37	Susan C. Boyle	5/10/37	Nurse
7/31/37	Robert Jackson	11/10/36	Mucker
7/31/37	Charlie Shelton	12/18/36	Mucker
7/31/37	J. A. Pierce	2/17/37	Mucker
7/31/37	R. M. Wilder	3/24/37	Miner
7/31/37	G. E. Anderson	1/11/37	Mucker
7/31/37	A. B. Doolittle	1/21/37	Miner
7/31/37	Clyde Whipple	2/4/37	Miner
7/31/37	G. J. Snyder	7/28/36	Mucker
7/31/37	F. W. Sanders	1/8/37	Miner
7/31/37	N. L. Benich	5/16/36	Mucker
7/31/37	T. F. Perkins	7/8/36	Mucker
7/31/37	W. R. Williamson	9/22/36	Mucker
7/31/37	H. L. Foreman	2/24/37	Miner
7/31/37	J. R. Bowen	6/12/37	Mucker
7/31/37	R. P. Anderson	4/16/37	Miner
7/31/37	S. M. Akin	1/10/37	Mucker
8/2/37	W. H. Hooper	5/7/37	Mucker
8/2/37	R. E. Pace	6/17/35	Miner
8/2/37	M. R. Dungan	6/29/35	Mucker
8/3/37	Roy Lynch	2/13/37	Miner
8/4/37	R. E. Birdwell	5/21/37	Miner
8/3/37	J. W. Wilson	5/5/37	Mucker
8/5/37	Monty Wathney	10/29/36	Miner
8/5/37	F. A. Baugh	7/24/37	Mucker
8/5/37	L. A. Goodwin	7/10/36	Mucker
8/7/37	T. L. Greenwood	11/12/36	Mucker
8/7/37	C. T. Bagley	2/9/37	Miner
8/7/37	J. H. Schissler, Jr.	6/8/37	Mucker
8/6/37	F. S. Knight	6/29/37	Mucker
8/9/37	D. B. Byfield	3/22/37	Miner
8/9/37	M. W. Byfield	7/9/37	Miner
8/9/37	L. J. Byfield	7/9/37	Miner
8/9/37	A. H. Staniger	7/20/37	Miner
8/10/37	L. A. Lee	2/17/37	Miner
8/10/37	R. G. Charlton	6/29/37	Mucker
8/10/37	A. L. Aviler	2/9/37	Sample Bucker
8/14/37	C. W. Pruitt	5/20/37	Mucker

*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
8/13/37	S. A. Mason	5/4/37	Miner
8/14/37	J. H. Headrick	12/18/36	Mucker
8/14/37	E. J. Caldwell	6/10/37	Mucker
8/14/37	C. C. Cameron	6/9/37	Mucker
8/16/37	Arthur Detloff, Jr.	10/29/36	Miner
8/17/37	G. G. Gilman	5/26/37	Mucker
8/17/37	M. R. Tovrea	9/24/36	Mucker
8/17/37	G. O. Younger	5/27/37	Mucker
8/19/37	Fowler Beach	8/24/36	Motorman
8/18/37	T. E. Schackelford	4/17/37	Mucker
8/19/37	J. J. Cannon	2/24/37	Handyman
8/17/37	E. F. Carnes, Jr.	7/13/37	B. S. Helper
8/20/37	J. E. Wall	1/21/36	Miner
8/20/37	R. K. Beeth	6/24/37	Mucker
8/21/37	J. W. Erickson	6/24/35	Miner
8/20/37	J. H. Bendixen	5/28/37	Miner
8/20/37	W. J. Hunt	5/28/37	Mucker
8/20/37	W. E. Lawson	5/27/37	Mucker
8/20/37	R. L. Whitlow	7/24/37	Miner
8/20/37	D. F. Blair	4/20/37	Mucker
8/21/37	K. L. Longan	7/20/37	Miner
8/20/37	A. T. Hoy	11/4/36	Elec. Apprentice
8/23/37	B. H. Belluzzi	6/25/37	Mucker
8/24/37	J. O. Nigra	6/11/37	Mucker
8/23/37	Carl Henderson	2/4/37	Miner
8/24/37	G. E. Taylor	9/26/36	Miner
8/25/37	Luit Reyna	6/12/35	Miner
8/24/37	A. C. Hansen	5/7/36	Finlay Operator
8/24/37	A. M. Thompson	2/13/36	Miner
8/25/37	W. P. Sertic	7/20/37	Mucker
8/24/37	J. N. Hall	4/22/37	Mucker
8/27/37	R. C. James	5/27/37	Mucker
8/27/37	W. M. Miller	3/24/37	Miner
8/22/37	F. A. Daublin, Jr.	6/12/37	Mucker
8/30/37	M. N. Besich	6/14/37	Mucker
8/30/37	E. C. Tallant	5/15/37	Mucker
8/30/37	A. D. Thompson	12/18/36	Mucker
8/27/37	Mrs. J. R. Higdon	8/14/37	Hosp. Cook
8/23/37	Chester Brooks	7/23/37	Asst. Chemist
8/22/37	Bostick Williams	8/7/37	Pharmacist
8/21/37	Rosilla Hill	8/16/37	Nurse
8/28/37	Nina Barr	8/24/37	Nurse
8/29/37	Chloeon Smith	8/27/37	Maid
8/27/37	Maria Renteria	5/5/37	Maid
8/31/37	R. H. Buckman	4/30/37	Miner
8/31/37	W. R. Mayo	3/17/37	Miner
8/31/37	J. D. Hodges	3/17/37	Miner
8/31/37	M. J. Wohler	1/8/37	Mucker
8/31/37	R. W. Stauss	3/8/37	Miner
8/31/37	R. L. Noble	6/12/35	Miner
8/31/37	W. L. Smith	6/13/35	Mucker
8/31/37	E. M. Childress	6/18/37	Mucker
8/31/37	L. H. McCormick	8/26/36	Miner
8/31/37	A. V. Childers	5/28/36	Mucker



*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
8/31/37	John O'Malley	2/4/37	Miner
8/31/37	W. W. Sharpe, Jr.	8/30/33	Miner
8/31/37	R. C. Wood	6/24/37	Miner
8/31/37	P. E. Rustin	5/8/37	Mucker
8/31/37	Richard Treeco	4/20/37	Mucker
8/31/37	R. A. McFarlane	5/14/37	Miner
8/31/37	Pete Ivanovich, Jr.	6/10/35	Mach. Helper
8/31/37	C. E. Ladd	6/3/37	Welder
8/31/37	John Flores	7/22/37	Laborer
8/31/37	Aniceto Gonzales	5/15/37	Laborer
9/1/37	J. A. DeGomez	10/1/36	Swamper
9/1/37	M. M. Simpson	7/22/35	Motorman
9/1/37	L. F. Coates	6/10/35	Miner
9/1/37	C. L. Carriahan	10/23/36	Vent. Man
9/1/37	C. H. Maak	6/24/37	Mucker
9/1/37	D. M. Furst	4/29/36	Miner
9/1/37	K. N. Cupp	6/12/37	Mucker
9/1/37	E. F. Cox	6/10/37	Mucker
9/2/37	Edward Toffler	5/18/37	Mucker
9/2/37	V. J. Berlendis	2/16/37	Mucker
9/2/37	J. E. Holt	6/16/37	Mucker
9/2/37	Gilbert Gardner	4/2/37	Motor Swamper
9/3/37	D. C. Root	5/29/37	Mucker
9/3/37	P. G. Prather, Jr.	6/1/37	Miner
9/3/37	J. W. Kerwin	1/3/36	Mucker
9/3/37	W. J. Knox	5/26/37	Miner
9/3/37	J. C. Sessions	6/22/37	Mucker
9/3/37	Paul Mills	4/30/37	Miner
9/3/37	E. B. Farnsworth	5/4/36	Mucker
9/4/37	C. R. Van Cleve	1/15/37	Mucker
9/3/37	W. G. Clark	6/4/37	Mucker
9/3/37	C. S. Penn	4/20/37	Mucker
9/3/37	Robert Long	6/29/37	Mucker
9/3/37	H. J. Reed	6/22/37	Mucker
9/3/37	R. R. Schmid	6/8/37	Mach. Helper
9/4/37	W. J. Hill, Jr.	1/20/37	Mucker
9/7/37	G. A. Rylance	6/15/37	Mucker
9/7/37	Thomas Brice	5/19/37	Mucker
9/4/37	R. E. Chevalier	6/12/37	Mucker
9/8/37	E. M. Baumkirchner	6/8/37	Mucker
9/8/37	R. L. Boat	6/8/37	Mucker
9/8/37	J. B. McPherson	6/15/37	Mucker
9/8/37	R. F. Hilburn	6/5/37	Miner
9/8/37	E. P. Mendoza	2/3/37	Laborer
9/9/37	J. H. Macia	6/22/37	Mucker
9/9/37	C. J. Beecroft	5/21/37	Mucker
9/11/37	B. R. Adams	6/8/37	Mucker
9/10/37	T. W. McSpadden	6/9/37	Mucker
9/9/37	Roscoe Parker	4/12/37	Painter
9/11/37	R. G. Kelly	7/2/37	B. M. Helper
9/11/37	Leona McGuire	1/25/37	Hotel Maid
9/13/37	G. D. Allen	6/8/37	Mucker
9/13/37	A. G. McClure	6/2/36	Mucker
9/13/37	E. L. Keeth	6/12/37	Mucker



*Exhibit B, Attached to Stipulation.*

Date Dropped From Payroll	Name	Last Date Hired	Occupation When Leaving Service
9/13/37	M. E. Williamson	8/31/37	Miner
9/13/37	M. L. Forrey	6/11/35	Miner
9/13/37	M. A. Boss	6/10/37	Mucker
9/13/37	B. R. Jerman, Jr.	6/23/37	Mill Helper
9/8/37	M. A. Bateman	1/19/39	Employment Agent
9/13/37	J. E. Pickering	6/10/37	Mucker
9/14/37	G. H. Crist	6/11/37	Mucker
9/14/37	K. E. Estes	6/21/37	Mucker
9/14/37	A. J. King	1/18/37	Handyman
9/15/37	M. J. Dodge	6/11/37	Mucker
9/14/37	J. C. Andreas	6/8/37	Mucker
9/14/37	A. F. Kristovich	6/21/37	Mucker
9/15/37	A. B. Allen	12/29/36	Miner
9/15/37	L. L. Myers	12/7/36	Miner
9/15/37	J. S. Dymock, Jr.	7/20/37	B. M. Helper
9/16/37	W. T. Bendixen	6/4/37	Mucker
9/16/37	C. A. Cosgrove	6/9/37	Mucker
9/16/37	N. F. Hazen	1/18/37	Miner
9/16/37	C. T. Bostick	8/5/37	Mucker
9/16/37	F. A. Rutledge	9/1/36	Mucker
9/17/37	J. B. Douthett	7/14/36	Miner
9/16/37	A. D. Lawson	11/12/36	Miner
9/16/37	C. L. Morris	1/30/37	Miner
9/17/37	J. F. Barnes	7/8/37	Miner
9/16/37	D. F. Vonk	7/8/37	Mucker
9/18/37	G. R. Sinclair	7/2/37	Mucker
9/16/37	W. C. Merrill	7/20/37	Elect. Helper
9/16/37	J. C. Rogers	7/20/37	Elect. Helper
9/17/37	D. B. Corral	7/26/37	Laborer
9/11/37	H. L. Henrie	6/22/37	Mach. Helper
9/21/37	J. H. Stewart	6/8/37	Mucker
9/21/37	J. D. Fowler	12/5/35	Mucker
9/21/37	Jack Hawn	3/13/37	Miner
9/21/37	J. M. Bowman	5/11/36	Mucker
9/18/37	A. V. Garcia	6/5/37	Laborer
9/18/37	F. R. Burgess	6/5/37	Laborer
9/18/37	C. L. Chavez	2/3/37	Laborer
9/21/37	J. M. West	5/4/37	Mucker
9/22/37	V. L. Cook	5/12/37	Mucker
9/22/37	Andrew Angle	6/29/37	Miner
9/23/37	R. F. Sprague	5/11/37	Pipe Helper
9/22/37	J. G. Laughlin	10/4/35	Conv. Helper
9/22/37	R. J. Wheat	6/9/34	Electrician
9/2/37	A. N. Breslin	5/26/37	Hosp. Orderly
9/23/37	Pearl A. Wilcox	9/3/37	Librarian
9/25/37	C. E. Taylor	5/28/37	Mucker
9/25/37	G. M. Anderson	2/9/37	Mucker
9/27/37	F. J. Murphy	2/22/37	Machinist
9/28/37	J. F. Teran	12/30/36	Laborer
9/29/37	C. T. Everett	11/9/36	Miner
9/29/37	C. E. Bertling	5/7/37	Mucker
9/29/37	L. A. Lemon	5/26/37	Mucker
9/30/37	A. P. Bendixen	6/23/37	Mucker
9/30/37	R. S. Wallace	10/8/36	Finlay Operator

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<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
9/9/37	Susan C. Boyle	8/31/37	Nurse
9/16/37	Dr. G. W. Patterson	1/10/37	Physician
9/17/37	Annie Bright	10/11/20	Maid
9/17/37	Ernest Bright	4/26/34	Hosp. Orderly
9/20/37	Margery Jordan	9/2/37	Nurse
9/20/37	Tokie Hudson	8/16/37	Nurse
9/30/37	Thelma Hall	7/9/37	Stenographer
9/30/37	J. E. Chantry	11/10/36	Mucker
9/30/37	C. D. Hensley	9/4/36	Mucker
9/30/37	J. P. Smith	4/29/37	Miner
9/30/37	C. W. Brown	5/17/37	Miner
9/30/37	F. A. Costey	8/1/36	Motorman
9/30/37	M. B. Lovett	1/8/37	Mucker
9/30/37	M. B. Walden	2/2/37	Miner
9/30/37	O. D. Chase	6/24/37	Mucker
9/30/37	H. E. Carter	1/9/36	Mucker
9/30/37	R. W. Merkle	9/9/36	Mucker
9/30/37	F. T. Baxter	4/21/37	Mucker
9/30/37	C. F. Dahlgren	2/22/37	Mucker
9/30/37	H. M. Hunter	9/15/36	Mucker
9/30/37	R. S. Walsh	8/13/36	Mucker
9/30/37	J. E. Price	11/21/36	Mucker
9/30/37	G. C. Frazier	7/13/37	Mucker
9/30/37	Clyde Davis	9/1/36	Mucker
9/30/37	N. A. Bell	2/9/37	Miner
9/30/37	R. J. Mann	1/26/37	Miner
9/30/37	O. M. Thompson	1/26/37	Miner
9/30/37	E. J. Martineau	3/22/37	Miner
9/30/37	H. H. Buckner, Jr.	3/26/37	Miner
9/30/37	R. R. Angle	3/24/37	Mucker
9/30/37	T. O. Luedtke	5/21/37	Mucker
9/30/37	N. S. Kindle	5/21/37	Mucker
9/30/37	E. J. Beauford	4/6/37	Miner
9/30/37	H. P. Roberts	2/16/37	Miner
9/30/37	J. C. Baldwin	2/11/37	Miner
9/30/37	J. L. McCaddon	2/11/37	Miner
9/30/37	B. B. Bailey	2/11/37	Mucker
9/30/37	Kenneth Crowder	3/19/37	Miner
9/30/37	Ray Coomer	8/3/37	Miner
10/4/37	F. R. Quill	5/20/37	Mucker
10/2/37	R. R. McPeters	11/12/36	Miner
10/1/37	V. R. Poulter	4/28/36	Mucker
10/4/37	Jeff Oglesby	7/7/37	Miner
10/4/37	A. H. Turley	3/10/37	Mucker
10/5/37	E. Van Treese	8/5/37	Mixer
10/4/37	R. A. Deets	3/1/37	Motorman
10/7/37	C. G. McGuire	3/3/37	Miner
10/7/37	Irvin Western	1/20/36	Miner
10/7/37	R. O. Malle	8/13/36	Miner
10/6/37	W. N. Rushin	2/18/37	Mucker
10/7/37	A. M. Carrillo	4/9/37	Laborer
10/5/37	P. T. Mount	4/12/37	Carpenter
10/9/37	A. D. Thompson	12/8/36	Mucker
10/8/37	J. A. Jiminez	5/22/37	Laborer



*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
1/8/37	G. M. Loya	5/22/37	Laborer
1/8/37	Gilbert Mendoza	7/15/36	Laborer
1/8/37	F. L. Barcelo	6/5/37	Laborer
1/8/37	M. Fimbres	4/16/37	Laborer
1/8/37	J. C. Moreno	4/16/37	Laborer
1/8/37	Jose Vasquez	5/1/37	Laborer
1/8/37	F. V. Sanchez	4/13/36	Laborer
1/8/37	C. A. Cota	7/14/37	Laborer
1/8/37	S. E. Gonzales	8/21/37	Laborer
1/8/37	W. J. Braman	5/7/37	Machinist
1/8/37	W. E. Little	4/17/37	Machinist
1/8/37	H. E. Chase	4/27/37	Machinist
1/8/37	R. M. Collins	4/8/37	Boilermaker
1/8/37	T. P. Blevins	5/12/37	Boilermaker
1/8/37	W. R. Kumero	1/23/37	Boilermaker
1/8/37	O. R. Harzman	3/24/37	Boilermaker
1/8/37	Jesus Felix	5/22/37	Laborer
1/9/37	Elbert Forrest	8/8/35	Vent. Man
1/11/37	G. W. Phears	7/8/36	Mucker
1/11/37	J. M. Graves	9/14/37	Mucker
1/11/37	L. V. Reed	10/1/36	Electrician
1/13/37	R. A. Cashell	11/7/36	Mucker
1/12/37	George Wilson	5/13/37	Miner
1/12/37	J. W. L. Evans	3/17/37	Miner
1/13/37	H. M. Thomson	8/4/36	Miner
1/15/37	A. J. Schwertner	9/22/36	Mucker
1/15/37	H. M. Sessions	2/4/35	Mucker
1/15/37	W. A. Floyd	3/2/36	Miner
1/15/37	F. L. Sullivan	5/11/37	Miner
1/15/37	I. G. Patrick	6/24/37	Mucker
1/18/37	Pickett Hinton	8/12/37	Mucker
1/18/37	H. C. Pendergraft	11/17/36	Miner
1/18/37	J. J. Payne	10/17/36	Miner
1/16/37	J. C. Williamson	6/3/37	Mucker
1/16/37	S. F. Wickham	2/24/37	Miner
1/20/37	W. B. Gingerich	9/9/37	Miner
1/26/37	Pedro Fabio	4/23/37	Laborer
1/20/37	Silvano Acevas	6/4/36	Laborer
1/20/37	Lauro Avechuco	4/6/37	Laborer
1/20/37	E. M. Chavez	12/4/36	Laborer
1/20/37	Carlos Pena	12/4/36	Laborer
1/20/37	D. G. Moreno	2/3/37	Laborer
1/20/37	A. G. Romero	4/24/37	Laborer
1/20/37	R. S. Lopez	6/4/36	Laborer
1/20/37	Martin Hernandez	4/21/37	Laborer
1/20/37	J. G. Benites	2/12/37	Laborer
1/20/37	Crespin Domingues	9/25/36	Laborer
1/20/37	Luis Sepulveda	7/10/37	Laborer
1/20/37	Clemens Buscher	9/25/35	Truck Driver
1/24/37	W. D. Collins	3/31/37	B. M. Helper
1/21/37	R. S. Miller	5/4/37	Mucker
1/21/37	L. A. Aaron	5/5/37	Miner
1/21/37	J. I. Taylor	4/15/37	Miner
1/21/37	W. E. Haygood	7/1/37	Miner

Tightly Bound



*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
10/21/37	Frank Gotch	5/2/36	Miner
10/21/37	C. R. Wynes	5/14/36	Mucker
10/21/37	J. A. Church	2/26/37	Miner
10/21/37	J. C. Jones	5/21/37	Mucker
10/21/37	A. R. Villa	5/29/37	Laborer
10/21/37	P. C. Llanes, Jr.	1/8/37	Laborer
10/22/37	M. O. Riordan	9/2/36	Mucker
10/22/37	C. E. Clark	2/17/37	Miner
10/22/37	E. J. Delpaz	1/15/37	Miner
10/22/37	J. J. Holton	2/17/37	Mucker
10/22/37	R. M. Brooke	2/24/37	Mucker
10/22/37	J. A. Kumey	6/3/37	Miner
10/22/37	C. L. Duncan	10/29/36	Finlay Operator
10/22/37	A. J. Ricketts	4/8/37	Trackman
10/22/37	J. A. Joy	4/8/37	Miner
10/22/37	S. F. Gray	3/29/37	Mucker
10/22/37	G. W. Rong	3/31/37	Miner
10/22/37	H. E. Dodson	5/11/37	Mucker
10/22/37	R. V. Harris	2/15/37	Motorman
10/22/37	Edward Conley	6/22/37	Miner
10/22/37	A. G. Moore	9/9/37	Mucker
10/22/37	R. C. Herrell	8/25/37	Miner
10/23/37	B. L. Gamel	3/5/36	Mucker
10/23/37	C. D. Puckett	5/28/36	Miner
10/23/37	Ernest Stewart	3/29/37	Mucker
10/23/37	A. A. Torres	7/2/37	Craneman
10/23/37	L. B. Franks	4/7/37	Carpenter
10/25/37	E. W. Rogers	7/10/35	Motorman
10/25/37	C. W. McCollum	8/27/36	Miner
10/25/37	A. V. Barrett	5/7/36	Miner
10/25/37	H. C. Goodman	9/9/37	Mucker
10/25/37	Mack Pultz	6/4/37	Mucker
10/25/37	H. G. Houston	2/12/37	Mucker
10/25/37	B. J. Lemke	9/11/37	Mucker
10/25/37	A. F. Oglesby	6/18/37	Mucker
10/25/37	T. E. Schackleford	9/13/37	Mucker
10/25/37	J. H. Tate	9/16/37	Mucker
10/25/37	A. V. Musgrave	10/17/35	Mucker
10/25/37	A. R. Negri	4/7/37	B. S. Helper
10/25/37	R. G. MacGregor	8/14/37	Mucker
10/25/37	O. C. McMenamy	8/17/37	Mucker
10/25/37	J. R. Gafford	8/24/37	Mucker
10/25/37	J. R. Higdon	6/11/34	Pumpman
10/25/37	Juan Ramirez	3/22/37	Laborer
10/25/37	L. A. Valenzuela	5/1/37	Laborer
10/25/37	Elmer Smith	10/7/27	Mucker
10/25/37	Raymond Assmer	9/4/36	Laborer
10/26/37	E. W. Wagner	2/9/37	Mucker
10/26/37	P. M. Bartlett	9/14/37	Miner
10/26/37	G. E. Dickey	8/12/37	Miner
10/26/37	C. L. Mieyr	6/10/35	Pipe Helper
10/27/37	F. D. Bogenschutz	8/29/36	Miner
10/27/37	W. A. Andrews	6/1/37	Mucker
10/27/37	R. L. Smith	5/5/37	Mucker

*Exhibit B, Attached to Stipulation.*

Date Dropped From Payroll	Name	Last Date Hired	Occupation When Leaving Service
0/2/37	K. E. Grimm	7/14/37	Mucker
0/2/37	Rex Loper	9/10/36	Mucker
0/2/37	J. C. Wilson, Jr.	7/8/36	Mucker
0/2/37	C. E. Jarnigan	6/4/37	Miner
0/2/37	P. L. Pavlovich	6/10/37	Mucker
0/2/37	O. B. Cook	10/17/36	Mucker
0/2/37	A. A. Moss	5/19/37	Mucker
0/2/37	S. C. McCahon	5/20/37	Miner
0/2/37	D. O. Pendergraft	3/3/37	Mucker
0/2/37	R. J. Gamel	7/10/35	Miner
0/2/37	J. J. Raymond	7/22/37	Miner
0/2/37	Pete Fern	5/27/37	Miner
0/2/37	P. J. Hunt	4/17/37	Miner
0/2/37	N. G. Green	4/17/37	Miner
0/2/37	E. M. Holbrook	2/15/37	Electrician
0/2/37	Margaret Kitchell	3/13/31	Stenographer
0/2/37	J. J. Cowling	11/25/35	Miner
0/2/37	W. L. Sholly	8/3/37	Miner
0/2/37	K. E. Wilson	8/12/37	Miner
0/2/37	J. V. Betts	7/20/37	Mucker
0/2/37	I. E. Petsche	6/9/37	Oiler
0/2/37	I. B. Harper	12/7/36	Painter
0/2/37	Germano Benedetti	2/4/37	Miner
0/2/37	Russell Pyeatt	8/17/37	Mucker
0/2/37	E. L. Hawkins	1/7/36	Miner
0/2/37	W. R. Graham	1/20/36	Mucker
0/2/37	S. C. McIntosh	4/30/36	Mucker
0/2/37	J. W. Dye	6/1/37	Miner
0/2/37	F. W. Younger	8/27/36	Mucker
0/2/37	H. C. Ambrose	3/24/37	Mucker
0/2/37	S. H. Stauss	3/8/37	Miner
0/2/37	C. E. Whittle	9/1/37	Mucker
0/2/37	T. W. McGarry	6/9/37	Miner
0/2/37	W. A. Parkin	11/2/35	Mucker
0/2/37	J. A. Peacock	4/2/37	Mucker
0/2/37	E. V. Russell	9/2/37	Mucker
0/2/37	G. E. Whitehead	9/2/37	Mucker
0/2/37	W. T. Harris	6/2/37	Mucker
0/2/37	J. C. Foster	5/5/37	Mucker
0/2/37	C. C. Qualls	6/2/37	Mucker
0/2/37	A. P. Baugh	9/2/37	Mucker
0/2/37	R. L. Gilliam	5/6/37	Mucker
0/2/37	F. G. White	4/13/37	Mucker
0/2/37	K. C. Emory	9/2/37	Mucker
0/2/37	W. C. Ogle	2/5/37	Miner
0/2/37	T. I. Coffman	9/9/37	Mucker
0/2/37	J. E. Jones	9/9/37	Mucker
0/2/37	A. T. Holmberg	8/12/37	Miner
0/2/37	J. C. Hedgecock	2/11/37	Guniteman
0/2/37	G. L. Brown	4/15/37	Mucker
0/2/37	W. B. Anderson	9/9/37	Mucker
0/2/37	E. J. Jacobson	6/4/37	Miner
0/2/37	B. F. Brown	1/15/37	Mucker
0/2/37	C. A. Wittig	9/18/37	Mucker



*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
10/31/37	H. B. Siria	9/18/37	Mucker
10/31/37	H. G. Hardt	9/18/37	Mucker
10/31/37	B. E. Roberts	2/13/37	Miner
10/31/37	B. E. Mayo	3/15/37	Motor Swamper
10/31/37	D. M. Spilsbury	8/19/37	Mucker
10/31/37	O. A. Mangum	5/11/37	Mucker
10/31/37	A. J. Olander	2/16/37	Mucker
10/31/37	W. C. Dippert	4/23/37	Mucker
10/37/37	A. N. Gafford	5/11/37	Mucker
10/31/37	H. F. Campbell	10/31/36	Miner
10/31/37	W. J. Smith	5/12/37	Mucker
10/31/37	C. J. D. Carroll	8/17/37	Mucker
10/31/37	W. A. Miller	5/14/37	Mucker
10/31/37	Glen O'Leary	1/4/37	Mucker
10/31/37	August Galigher	8/18/36	Miner
10/31/37	J. P. Spilsbury	1/7/37	Mucker
10/31/37	G. R. Martinez	2/7/37	Mucker
10/31/37	Amos West	8/24/37	Mucker
10/31/37	T. W. Brock	5/21/37	Mucker
10/31/37	Claude Tucker	1/13/37	Mucker
10/31/37	C. C. Yates	8/22/36	Mucker
10/31/37	F. L. Coons	1/13/37	Mucker
10/31/37	Milburn Meadows	3/24/37	Mucker
10/31/37	D. A. Herrington	5/8/37	Mucker
10/31/37	B. H. Cauley	3/1/37	Miner
10/31/37	W. D. Tyree	3/31/37	Mucker
10/31/37	R. S. Long	6/23/37	Mucker
10/31/37	C. M. Larson	6/24/37	Mucker
10/31/37	C. M. Thomas	8/31/37	Mucker
10/31/37	D. I. Gartin	9/2/37	Mucker
10/31/37	K. B. Howell	6/2/37	Mucker
10/31/37	A. A. Gray	2/4/37	Miner
10/31/37	T. A. Martin	5/5/37	Mucker
10/31/37	W. H. Davis	9/2/37	Mucker
10/31/37	H. A. Saarick	5/8/37	Mucker
10/31/37	Vernon Davis	5/14/37	Mucker
10/31/37	R. J. Brucks	3/5/37	Mucker
10/31/37	A. C. Linn	2/13/37	Miner
10/31/37	M. B. Judd	9/2/37	Mucker
10/31/37	J. E. Bruce	5/21/37	Mucker
10/31/37	R. E. Benton	9/16/37	Mucker
10/31/37	L. K. Farnsworth	8/24/37	Mucker
10/31/37	H. T. Puckett	9/18/37	Mucker
10/31/37	C. A. Van Troba	3/8/37	Miner
10/31/37	H. L. Lott	9/18/37	Mucker
10/31/37	W. W. Taylor	4/15/37	Mucker
10/31/37	W. T. Brunson	4/23/37	Mucker
10/31/37	A. M. Janzan	4/22/37	Mucker
10/31/37	James Doyle	9/18/37	Mucker
10/31/37	R. R. Howell	8/31/37	Mucker
10/31/37	E. R. Bowman	8/31/37	Mucker
10/31/37	J. L. Parnell	1/8/37	Mucker
10/31/37	J. G. Mitchum	1/30/37	Miner
10/31/37	W. E. Warren	4/27/37	Mucker



*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
10/31/37	W. W. Orton	4/23/37	Mucker
10/31/37	Floyd Winchester	4/28/37	Mucker
10/31/37	R. M. Adams	4/29/37	Mucker
10/31/37	A. C. Jean	9/17/36	Mucker
10/31/37	R. M. House	6/10/37	Mucker
10/31/37	William Rogers	3/15/37	Mucker
10/31/37	H. F. Williams	4/27/37	Mucker
10/31/37	R. R. Jones	5/1/37	Mucker
10/31/37	Roy Stone	3/5/37	Mucker
10/31/37	D. O. Jarvis	4/15/37	Mucker
10/31/37	J. C. Martineau	4/15/37	Mucker
10/31/37	A. J. Fowler	4/23/37	Mucker
10/31/37	Charlie McMenamy	4/28/37	Mucker
10/31/37	M. E. Mitchell	3/3/37	Miner
10/31/37	P. R. Cosgrove	1/27/37	Miner
10/31/37	A. E. Glasscock	3/27/37	Mucker
10/31/37	M. J. Brockman	5/7/37	Mucker
10/31/37	R. H. D'Albini	6/11/37	Mucker
10/31/37	S. J. Brockman	1/18/37	Miner
10/31/37	V. A. Orton	1/28/37	Miner
10/31/37	George Onufrock	1/28/37	Miner
10/31/37	J. H. Kridel	2/26/37	Miner
10/31/37	Harvey Medley	5/8/37	Miner
10/31/37	Carl Poole	5/19/37	Miner
10/31/37	E. H. Diffie	5/19/37	Mucker
10/31/37	J. R. Costey	5/20/37	Mucker
10/31/37	J. E. Blackwell	5/25/37	Mucker
10/31/37	W. G. Ashman	2/4/37	Miner
10/31/37	A. O. Orton	7/7/37	Mucker
10/31/37	S. W. Davis	9/9/37	Mucker
10/31/37	Florian Pilarczyk	2/4/37	Miner
10/31/37	Marion Turley	10/7/37	Mucker
10/31/37	Gordon Copeland	9/9/37	Mucker
10/31/37	W. H. Kizer	9/11/37	Mucker
10/31/37	M. G. Bloosvitch	7/14/37	Mucker
10/31/37	W. E. Moore	4/15/37	Mucker
10/31/37	F. J. Miller	3/10/37	Mucker
10/31/37	J. C. Harkins	9/14/37	Mucker
10/31/37	F. C. Bingham	10/7/37	Mucker
10/31/37	M. L. Ryan	10/7/37	Mucker
10/31/37	E. D. Wheeler	10/7/37	Mucker
10/31/37	D. D. Burnett	3/3/37	Mucker
10/31/37	L. E. Higgins	8/3/37	Miner
10/31/37	C. L. Davis	9/14/37	Miner
10/31/37	H. M. Bailey	3/27/37	Mucker
10/31/37	Harry Marks	9/11/37	Mucker
10/31/37	W. L. Dean	8/7/37	Miner
10/31/37	Alex. Balich	8/7/37	Mucker
10/31/37	J. W. Johnston	8/9/37	Mucker
10/31/37	W. H. McCahon	5/15/37	Miner
10/31/37	R. A. Bowers	4/17/37	Mucker
10/31/37	F. L. Shreves	6/4/37	Mucker
10/31/37	O. M. Farnsworth	8/17/37	Mucker
10/31/37	W. E. Miller	8/14/37	Mucker

*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
10/31/37	Van Lang	8/14/37	Mucker
10/31/37	P. M. Hunt	1/7/37	Mucker
10/31/37	I. W. Tidwell	6/4/37	Mucker
10/31/37	W. W. Gregg	1/11/37	Miner
10/31/37	J. R. Campbell	3/17/37	Mucker
10/31/37	J. D. Cooper	1/26/37	Miner
10/31/37	R. R. Langley	8/17/37	Mucker
10/31/37	F. J. Postles	9/16/37	Mucker
10/31/37	H. H. Grenwelge	9/21/37	Mucker
10/31/37	T. R. Bozarth	5/12/37	Mucker
10/31/37	A. C. Feller, Jr.	3/27/37	Mucker
10/31/37	J. F. Farnsworth	5/12/37	Mucker
10/31/37	G. L. Burden	4/22/37	Mucker
10/31/37	J. M. Tidmore	5/13/37	Mucker
10/31/37	O. M. Clarke, Jr.	3/31/37	Mucker
10/31/37	C. E. Younger	5/15/37	Mucker
10/31/37	Wilford Stokes	4/22/37	Mucker
10/31/37	J. H. Bricker, Jr.	5/19/37	Mucker
10/31/37	Barnie Turner	5/25/37	Mucker
10/31/37	Delma Fikes	5/27/37	Mucker
10/31/37	A. Q. Nations	6/11/37	Mucker
10/31/37	W. C. Slover	5/28/37	Mucker
10/31/37	O. D. Winkle	6/23/37	Mucker
10/31/37	F. W. Howell	6/24/37	Miner
10/31/37	J. B. Glenn, Jr.	6/25/37	Mucker
10/31/37	O. F. Satterfield	6/25/37	Mucker
10/31/37	J. A. Peccolo	8/19/37	Mucker
10/31/37	H. C. Davis	8/24/37	Mucker
10/31/37	C. L. Hicks	5/4/37	Mucker
10/31/37	W. A. Brady	2/15/37	Mucker
10/31/37	C. V. Jarrett	3/15/37	Mucker
10/31/37	D. G. Tyler	2/12/37	Mucker
10/31/37	Clifford Dean	4/21/37	Miner
10/31/37	E. W. Kelly	2/26/37	Mucker
10/31/37	Kenneth Crowder	3/19/37	Miner
10/31/37	W. E. White	9/11/37	Mucker
10/31/37	H. C. Boyles	5/19/37	Mucker
10/31/37	J. M. Modesett	5/29/37	Mucker
10/31/37	Peter Kerwin	6/11/37	Miner
10/31/37	D. E. Flanery	6/29/37	Miner
10/31/37	L. I. Gatlin	9/14/37	Mucker
10/31/37	George Barringer	9/16/37	Mucker
10/31/37	P. F. Keeler	7/22/37	Miner
10/31/37	H. H. Davis	8/5/37	Miner
10/31/37	Roy Skarl	9/21/37	Mucker
10/31/37	T. O. Imms	8/7/37	Mucker
10/31/37	E. A. White	9/21/37	Mucker
10/31/37	B. E. Kajohn	8/9/37	Mucker
10/31/37	L. W. Preston	9/21/37	Mucker
10/31/37	W. T. Hastie	8/12/37	Mucker
10/31/37	A. E. Farnsworth	8/14/37	Mucker
10/31/37	G. T. Kartchner	8/14/37	Mucker
10/31/37	G. E. Haynie	8/17/37	Mucker
10/31/37	M. T. Anderson	8/17/37	Mucker



*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
10/31/37	Paul Watkins	8/19/37	Mucker
10/31/37	M. S. Ross	8/21/37	Mucker
10/31/37	F. N. Reyes	7/14/37	Laborer
10/31/37	LaWayne Hussey	9/1/36	Mucker
10/31/37	M. F. Thompson	1/30/37	Mining Engineer
10/31/37	Wiley Stephens	9/15/37	Hosp. Orderly
10/31/37	Jewell Lee	8/12/37	Nurse
10/31/37	A. M. Cianeros	2/14/37	Laborer
10/31/37	Carmen Moreno	7/18/36	Laborer
10/31/37	C. P. Peters	4/5/37	Watchman
10/31/37	D. A. Quijada	7/31/37	Laborer
10/31/37	T. R. Ohton	7/31/37	Laborer
10/31/37	G. R. Hurtado	9/11/37	Laborer
10/31/37	F. F. Carbajal	9/18/37	Laborer
10/31/37	Max Robledo	4/21/37	Laborer
10/31/37	R. O. Figueroa	7/31/37	Laborer
10/31/37	G. L. Weatherford	3/3/37	Mucker
10/31/37	J. E. Hodges	5/15/35	Mucker
10/31/37	R. E. Skates	5/14/37	Mucker
10/31/37	M. W. Bowman	8/9/36	Mucker
10/31/37	C. R. Stevens	10/26/35	Miner
10/31/37	C. F. Morrison	2/25/36	Mucker
10/31/37	S. L. Wright, Jr.	4/29/37	Mucker
10/31/37	L. O. Dahlgren	6/15/37	Mucker
10/31/37	Olof Wade	2/17/37	Trackman
10/31/37	E. P. White	9/4/35	Miner
10/31/37	F. R. Williams	9/9/35	Miner
10/31/37	F. A. Gray	5/5/35	Miner
10/31/37	V. D. Collum	3/3/37	Miner
10/31/37	B. E. Haygood	8/27/36	Mucker
10/31/37	Gurney Dunham	1/8/37	Mucker
11/2/37	G. S. Nelson	11/17/36	Mucker
11/3/37	C. G. Hughes	5/18/37	Miner
11/3/37	John Rooney	1/11/37	Miner
11/2/37	F. D. Long	7/7/37	B. S. Helper
11/1/37	R. A. Arquelles	9/18/37	Laborer
11/5/37	Roy Lynch	8/24/37	Miner
11/5/37	J. J. Phillips	5/6/37	Mucker
11/5/37	L. J. Bell	6/3/37	Miner
11/8/37	L. H. Green	5/11/27	Miner
11/8/37	A. J. Ricketts	10/22/37	Trackman
11/8/37	R. L. James	12/3/29	Mucker
11/8/37	J. D. Mahoney	1/8/37	Mucker
11/8/37	W. E. Taylor	10/19/36	Miner
11/8/37	G. E. Taylor	9/11/37	Miner
11/8/37	Wilford Stokes	4/22/37	Miner
11/9/37	J. V. Dye	2/26/36	Miner
11/12/37	M. J. Davis	8/12/37	Miner
11/10/37	E. F. Hagins	9/3/36	Miner
11/12/37	F. C. Shreves	4/16/36	Carpenter
11/13/37	Manuel Galaz	9/4/36	Laborer
11/12/37	Guadalupe Llanez	8/5/35	Laborer
11/15/37	E. F. Hamilton	12/4/29	Shift Boss
11/15/37	W. F. Doeltz	3/17/37	Draftsman



*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
11/16/37	R. S. Miller	5/4/37	Mucker
11/16/37	C. L. Riley	3/11/36	Mucker
11/16/37	J. T. Kimbrough	2/20/34	Mucker
11/17/37	S. R. Jeffers	9/2/37	Mucker
11/17/37	W. L. Benton	5/7/37	Mucker
11/17/37	J. D. E. Dixon	1/8/37	Mucker
11/16/37	J. A. Hill	6/14/37	Mucker
11/20/37	W. L. Rickard	6/12/37	Mucker
11/20/37	S. J. Adams	1/18/37	Carpenter
11/19/37	F. A. Neal	9/16/37	B. S. Helper
11/22/37	N. C. Rodriguez	4/2/37	Laborer
11/22/37	Candelario Aguirre	4/4/35	Laborer
11/22/37	Ambrosio Sanchez	2/3/37	Laborer
11/22/37	M. Z. Jaramillo	7/10/37	Laborer
11/22/37	J. S. Castillo	7/10/37	Laborer
11/22/37	R. C. Martinez	2/7/37	Laborer
11/22/37	Mauricio Gil	4/16/37	Laborer
11/22/37	Juan Rivera	4/7/37	Laborer
11/22/37	J. A. Acuna	8/21/37	Laborer
11/22/37	Aristeo De Leon, Jr.	8/24/37	Laborer
11/20/37	J. R. Lewis	7/24/36	Boilermaker
11/24/37	John Paynich	8/4/36	Mucker
11/23/37	J. M. Bostick	4/27/37	Mucker
11/23/37	C. A. Raab	9/23/37	Mining Engineer
11/24/37	Laura Wohler	9/27/37	Maid
11/26/37	H. M. Goetz	5/4/36	Mucker
11/26/37	H. L. Williams	10/3/35	Mucker
11/30/37	J. R. Hall	8/19/37	Miner
11/30/37	Willis Diffie	5/21/36	Mucker
11/30/37	H. O. Bass	2/22/37	Miner
11/30/37	J. P. Sturdivant	1/3/36	Timberman
11/30/37	F. E. Kirby	6/13/35	Miner
11/30/37	W. M. Whitehill	1/18/37	Miner
11/30/37	J. H. Ronning	1/20/37	Mucker
11/30/37	C. L. Russell	1/9/36	Miner
11/30/37	Patrick Evans	3/1/37	Miner
11/30/37	I. L. Judd	6/12/35	Miner
11/30/37	R. N. Haynes	4/23/37	Laborer
11/30/37	H. A. House	6/10/37	Mucker
11/30/37	F. L. Hedrick	9/27/37	Janitor
11/30/37	Susan Boyle	9/23/37	Nurse
11/30/37	Margery Jordan	10/29/37	Nurse
11/30/37	J. M. Williams	3/25/35	Clerk
11/30/37	T. E. Tallant	4/1/37	Mucker
11/30/37	V. D. Collum	3/3/37	Miner
11/30/37	H. G. Wallis	1/8/37	Mucker
11/30/37	E. B. Brooks	1/8/37	Miner
11/30/37	T. B. Noland	8/29/36	Miner
11/30/37	A. F. Carter	3/24/37	Mucker
11/30/37	B. H. Barnette	6/24/37	Mucker
11/30/37	L. V. Trammell	10/1/35	Mucker
11/30/37	W. J. Ferrell	7/21/36	Mucker
11/30/37	Bart Oliver	4/22/37	Miner
11/30/37	M. L. Lynch	11/12/36	Miner
11/30/37	J. T. Verant	8/5/37	Miner
11/30/37	Arnulfo Aguirre	8/5/35	Laborer

*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
11/30/37	V. R. Scheffler	8/20/36	Mucker
11/30/37	T. L. Henson	5/13/37	Mucker
11/30/37	K. N. Goodman	4/30/37	Mucker
12/3/37	L. E. Lillard	8/16/36	Finlay Operator
12/4/37	R. E. Pace	8/17/37	Miner
12/6/37	A. E. Hill	5/8/37	Mucker
12/4/37	J. H. Henderson	6/23/37	Miner
12/3/37	D. P. Faulconer	10/2/35	Miner
12/3/37	J. L. McDonald	8/12/36	Miner
12/8/37	R. W. Burns	10/1/36	Mucker
12/8/37	T. V. Miller	8/25/36	Mucker
12/8/37	T. J. Riggs	8/5/37	Mucker
12/8/37	W. J. Winiarski	11/16/35	Miner
12/8/37	G. A. Deshler	7/8/36	Miner
12/8/37	C. H. Lively	11/19/36	Miner
12/9/37	J. W. Tenney	4/6/37	Miner
12/8/37	B. H. Helms	3/19/37	Mucker
12/9/37	H. T. Bagley	10/3/36	Mucker
12/9/37	H. B. Kelley	5/8/36	Mucker
12/9/37	T. P. Bostick	12/18/36	Mucker
12/9/37	E. L. Nelson	3/24/37	Miner
12/8/37	O. T. Pfefferkorn	9/16/37	Mucker
12/8/37	L. S. Armstrong	6/24/37	Miner
12/8/37	L. V. Clark	6/11/35	Miner
12/8/37	Porfirio De Leon	12/30/36	Laborer
12/8/37	P. A. Gomez	7/10/37	Laborer
12/8/37	Rafael Sonoqui	9/23/36	Laborer
12/8/37	A. B. Teran	5/26/37	Laborer
12/8/37	August Hillman	4/23/37	Laborer
12/8/37	R. R. Wachs	4/15/37	Machinist
12/8/37	A. L. Rambo	3/29/37	Electrician
12/8/37	L. A. Colden	5/1/37	Electrician
12/10/37	J. L. Cleveland	10/3/36	Mucker
12/10/37	B. G. Taff	5/21/37	Mucker
12/10/37	Timothy Monohan	8/5/37	Miner
12/10/37	W. A. Day	9/28/36	Mucker
12/10/37	I. H. Miller	8/7/37	Mucker
12/10/37	T. A. Brady	4/30/37	Tinsmith
12/10/37	R. R. Wines	2/15/37	Truck Driver
12/10/37	D. B. Hogan, Jr.	5/2/36	Truck Driver
12/10/37	Earl Peterson	2/13/36	Handyman
12/10/37	O. H. Mathewson	1/3/37	B. M. Apprentice
12/10/37	W. E. Lisonbee	4/21/37	Welder
12/10/37	Harold Webster	10/15/36	Electrician
12/10/37	A. M. Mattingly	1/20/37	Electrician
12/10/37	J. S. Hughes	8/13/36	B. S. Helper
12/10/37	J. E. Greene	12/30/36	B. S. Helper
12/11/37	C. O. Martineau	9/13/36	Mucker
12/11/37	W. W. Lowrance	11/12/36	Tool Nipper
12/11/37	D. S. Craig	12/1/36	Miner
12/11/37	N. M. Benderach	9/3/36	Mucker
12/11/37	E. V. Evans	10/17/36	Miner
12/11/37	C. O. Blair	11/9/36	Miner
12/11/37	H. K. Spilsbury	12/30/36	Mucker
12/11/37	F. W. Oliver	9/9/36	Mucker
12/11/37	R. L. Williamson	11/10/36	Mucker

*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
12/11/37	C. P. Mansfield	4/27/37	Mucker
12/11/37	T. H. Voelker	1/11/36	Motorman
12/11/37	J. A. Windham	8/14/37	Trackman
12/11/37	U. T. Link	6/25/35	Motorman
12/11/37	C. A. Newsom	9/29/36	Motorman
12/11/37	F. E. Baumkirchner	5/18/37	Miner
12/11/37	E. J. King	6/22/37	Mucker
12/11/37	R. M. Cotten	8/19/37	Miner
12/11/37	T. S. Gough	3/3/37	Blacksmith
12/13/37	T. L. Herrington	10/8/36	Mucker
12/13/37	C. A. Saunders	9/22/36	Motorman
12/13/37	W. P. Stensgaard	9/21/36	Machinist
12/11/37	C. D. Davis	6/16/37	Machinist
12/11/37	W. A. Winchester	4/6/37	Watchman
12/15/37	Ralph Scott	11/12/36	Mucker
12/15/37	Harold Eldridge	4/12/37	Tool Nipper
12/14/37	S. O. Tanner	4/20/37	Miner
12/14/37	W. W. Walters	9/24/36	Pump Helper
12/14/37	C. L. Moore	3/31/37	Pipe Helper
12/15/37	W. J. Evans	18/5/37	Miner
12/15/37	Dr. W. R. Quinn	6/4/34	Physician
12/16/37	V. P. Kelly	10/29/36	Mucker
12/15/37	J. L. Brittain	2/15/36	Miner
12/16/37	W. H. Crossland	3/8/37	Mucker
12/20/37	Grant Wimberley	10/1/36	Mucker
12/20/37	J. F. Gray	12/15/35	Miner
12/20/37	C. W. Dean	8/24/37	Mucker
12/20/37	A. W. Knowles	1/3/36	Miner
12/20/37	D. W. Clayton	8/1/36	Mucker
12/20/37	Bill Trezise	9/10/36	B. M. Helper
12/22/37	R. R. Buckridge	4/12/37	Mucker
12/22/37	M. O. Evans	6/3/37	Mucker
12/22/37	L. C. North	10/8/36	Mucker
12/22/37	R. W. Halladay	9/3/36	Mucker
12/22/37	H. W. Long	6/11/36	Miner
12/22/37	J. T. Toland	8/20/35	Miner
12/22/37	J. N. Dodd	4/29/37	Mucker
12/22/37	W. N. Rafailovich	8/29/36	Mucker
12/22/37	J. M. Pilarczyk	10/29/36	Miner
12/22/37	R. J. McDonald	4/1/36	Mucker
12/22/37	C. E. Thur	5/31/37	Miner
12/22/37	P. W. Hanning	8/7/37	Miner
12/22/37	Loyde Johnson	9/9/36	Mucker
12/22/37	P. V. Hiraes	3/29/37	Laborer
12/22/37	T. L. Townsend	7/28/36	Mucker
12/22/37	O. E. Lasater	6/26/35	B. M. Helper
12/27/37	F. V. Dunn	6/24/35	Miner
12/27/37	Willie Paken	4/7/36	Miner
12/27/37	F. M. Ochoa	1/8/37	Laborer
12/29/37	C. R. Fritz	1/4/37	Machinist Helper
12/29/37	J. W. Prescott	2/19/37	Pipe Helper
12/29/37	S. E. Lynn	1/1/30	Pipe Fitter
12/29/37	W. L. Mayo	5/7/37	Mucker
12/29/37	L. J. Combel	5/30/34	Watchman
12/30/37	G. T. Modesette	9/3/36	Miner
12/30/37	O. L. Newbury	9/9/36	Mucker
12/30/37	V. O. Hardt	8/11/36	Mucker



*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
12/30/37	H. R. Fryke	8/29/36	Miner
12/30/37	C. T. Moore	8/17/37	Mucker
12/30/37	N. L. French	1/7/36	Finlay Operator
12/30/37	G. A. Rhodes	4/17/36	Mucker
12/30/37	R. L. Hoffman	3/12/36	Miner
12/30/37	H. M. June	5/9/36	Finlay Operator
12/30/37	D. L. Parnsworth	8/26/36	Mucker
12/30/37	H. B. Stewart	1/6/36	Miner
12/30/37	Gordon Davis	7/28/36	Mucker
12/30/37	E. V. Martin	4/21/36	Mucker
12/30/37	A. C. Melton	5/2/36	Miner
12/30/37	D. F. Keeler	4/16/36	Mucker
12/30/37	H. J. Tilton	8/18/36	Mucker
12/30/37	E. H. Walker	7/14/37	Mucker
12/30/37	E. W. Kelly	2/26/37	Miner
12/30/37	O. D. Haynie	6/22/37	Miner
12/30/37	E. G. Lopez	6/12/37	Laborer
12/30/37	Nick Sena	8/8/35	Laborer
12/30/37	Dionicio Moreno	12/30/36	Laborer
12/30/37	M. C. Martinez	12/4/36	Laborer
12/30/37	Francisco Lugo	9/22/36	Laborer
12/30/37	A. F. Ohton	12/30/36	Laborer
12/30/37	C. C. Brashear	2/22/37	Carpenter
12/30/37	J. D. Gilman	2/2/37	Carpenter
12/30/37	D. I. Stutzman	11/16/36	Welder
12/30/37	G. C. Veliz	3/29/37	Boilermaker
12/31/37	W. H. Phillips	8/20/36	Miner
12/31/37	R. E. Brandt	5/14/36	Mucker
12/31/37	A. P. Coons	5/13/36	Mucker
12/31/37	J. E. Werner	6/1/37	Mucker
12/31/37	D. H. Holt	10/8/36	Mucker
12/31/37	Lonnie Cloud	1/7/36	Miner
12/31/37	Ike Gorman	12/30/36	Mucker
12/31/37	Andreas de Leon	4/13/36	Laborer
12/31/37	M. S. Best	9/14/37	Painter
12/31/37	R. P. Pettijohn	5/31/35	Mucker
12/31/37	George Sandich	11/4/36	Watchman
12/31/37	F. J. Wojcik	4/5/37	Watchman
12/31/37	W. A. White, Jr.	1/13/36	Clerk
12/31/37	A. B. McClure	6/6/37	Hotel Porter
12/31/37	Edna Murphy	12/25/37	Nurse
12/31/37	R. J. Wish	7/30/36	Mucker
12/31/37	J. D. Williams	5/8/37	Trammer
12/31/37	Raymond James	3/5/36	Motor Swamper
12/31/37	C. H. Johnston	6/21/37	Miner
12/31/37	H. G. Harris	9/24/36	Finlay Operator
12/31/37	T. I. Phillips	8/29/36	Motor Swamper
12/31/37	J. H. Jett	4/21/36	Miner
12/31/37	Tom Lease	8/16/36	Miner
12/31/37	F. E. Roberson	8/4/36	Mucker
12/31/37	J. E. Jones	11/1/37	Miner
12/31/37	E. A. McDougall	2/26/37	Mucker
12/31/37	J. T. Wilson	4/18/36	Mucker
12/31/37	E. R. Martinez	4/16/37	Finlay Operator
12/31/37	P. R. Brown	5/9/36	Mucker
12/31/37	C. W. Weathers	7/22/37	Miner
12/31/37	W. C. Hobgood	2/16/36	Mucker

Tightly Bound

*Exhibit B, Attached to Stipulation.*

<i>Date Dropped From Payroll</i>	<i>Name</i>	<i>Last Date Hired</i>	<i>Occupation When Leaving Service</i>
12/31/37	Edward Johnson	4/28/36	Mucker
12/31/37	A. E. Dunham	1/11/36	Miner
12/31/37	R. D. Haynie	6/10/35	Miner
12/31/37	Arden Rickard	9/1/36	Mucker
12/31/37	M. J. Cowan	12/29/36	Miner
12/31/37	Charles Brandon	9/1/36	Miner
12/31/37	Gilberto Chaver	9/4/36	Laborer
12/31/37	J. M. Valenzuela	7/24/36	Laborer
12/31/37	P. C. Llanez, Jr.	12/21/37	Laborer
12/31/37	J. P. Chavez	6/4/36	Laborer
12/31/37	J. S. Guillen	12/30/36	Laborer
12/31/37	Cisto Salazar	4/16/37	Laborer
12/31/37	Blas Urbina	4/23/37	Laborer
12/31/37	C. D. Sheldon	8/4/36	Mucker
12/31/37	R. D. Barron	2/4/37	Mucker
12/31/37	G. C. Gillaspay	1/1/37	Pumpman
12/31/37	L. J. Larsen	6/15/16	Blacksmith
12/31/37	D. C. Barnard	9/10/34	Assayer
12/31/37	Carmen Coronado	9/4/36	Laborer
1/1/38	Everett Duncan	1/30/37	Miner
1/3/38	J. M. Dobler	12/16/36	Miner
1/5/38	T. J. White	3/31/37	Pipefitter
1/7/38	R. M. Orner	3/5/37	Miner
1/7/38	Clifford Peterson	9/14/37	Mucker
1/7/38	K. D. McPherson	10/31/36	Carp. Apprentice
1/7/38	J. C. Hutchison, Jr.	3/19/37	Painter Helper
1/7/38	P. L. Keller	4/16/36	Electrician
1/10/38	William Todd, Jr.	8/4/36	Mucker
1/10/38	W. N. Meador	5/5/37	Mucker
1/12/38	Paul Criss	5/7/36	Mucker
1/15/38	W. G. Smith	1/3/36	Mucker
1/15/38	L. G. Rex	5/11/37	Mucker
1/18/38	G. Y. Valenzuela	2/3/37	Laborer
1/17/38	J. P. Llanez	10/16/31	Laborer
1/17/38	J. B. Dannelley	6/9/36	Miner
1/18/38	Gordon Hodges	6/23/37	Mucker
1/27/38	E. C. Hibble	8/18/36	Mucker
1/27/38	E. L. Watkins	6/11/35	Mucker
1/25/38	C. R. Gandy	4/18/36	Miner
1/27/38	L. L. Pruett	1/11/37	Mucker
1/27/38	Eric Wahlgren	12/8/33	Miner
1/27/38	R. D. Williamson	9/17/36	Mucker
1/22/38	L. H. Tenney	5/27/37	Mucker
1/27/38	J. H. Townsend	6/25/37	Mucker
1/27/38	Steve Kroh	4/25/36	Miner
1/27/38	L. C. McKnight	9/9/37	Miner
1/27/38	H. T. Peterson	12/1/36	Miner
1/27/38	J. M. Atkins	10/31/36	Miner
1/27/38	M. B. McLaughlin	4/22/37	Mucker
1/25/38	M. H. Childress	7/1/35	Miner
1/24/38	G. M. Harkelson	12/4/35	Painter Helper
1/27/38	N. M. Acosta	1/24/22	Laborer
1/27/38	W. K. Bell	6/10/35	Miner
1/7/38	Mrs. Hilda Andrews	1/4/38	Nurse
1/16/38	Georgia B. Hayes	9/17/37	Maid

Total number leaving service 1891

UNITED STATES OF AMERICA,  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
TWENTY-FIRST REGION

IN THE MATTER OF  
PHELPS DODGE CORPORATION, a corpo-  
ration

and

CASE  
No. XXI-C-266

INTERNATIONAL UNION OF MINE, MILL,  
AND SMELTER WORKERS, LOCAL No. 30.

**Consent.**

Now comes the INTERNATIONAL UNION OF MINE, MILL, AND SMELTER WORKERS, LOCAL No. 30, and consents to the inclusion into the record in the above proceedings, the Stipulation heretofore entered into by and between William R. Walsh, Attorney for the National Labor Relations Board, and Ellinwood & Ross and Denison Kitchel, attorneys for the Respondent, dated January 11, 1939.

Dated: January 31, 1939.

INTERNATIONAL UNION OF MINE, MILL AND  
SMELTER WORKERS, LOCAL No. 30

By /s/ JOHN P. FOLEY  
President



**Letter, Dated June 16, 1939.**

**JUNE 16, 1939**

**Re: PHELPS DODGE CORPORATION  
Case No. C-500**

**DEAR SIR:**

At the oral argument upon exceptions to the Trial Examiner's Intermediate Report in the above proceeding, former Board member Donald Wakefield Smith was one of two members of the Board who heard the argument. Since Donald Wakefield Smith is no longer a member of the Board, the case will be decided by members of the Board, at least one of whom was not present at the oral argument. The Board, pursuant to Article II, Section 38(d), of National Labor Relations Board Rules and Regulations—Series 1, as amended, accordingly has directed me to notify you of the opportunity of requesting further oral argument if desired. Such request should be filed within ten days from the receipt of this letter.

Very truly yours,

**NATHAN WITT  
Secretary**

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**Letter, Dated June 23, 1939.**

**LAW OFFICES OF  
ELLINWOOD & ROSS  
8TH FLOOR TITLE & TRUST BUILDING  
Phoenix, Arizona**

**JUNE 23, 1939.**

**MR. NATHAN WITT, Secretary,  
NATIONAL LABOR RELATIONS BOARD,  
Washington, D. C.**

**Re: PHELPS DODGE CORPORATION Case No. C-500**

**DEAR SIR:**

Your letter of June 16, 1939, regarding the above case was received in this office on June 20, 1939.

In view of the change in the membership of the Board, we respectfully request the opportunity of presenting further oral argument in this case.

**Yours very truly,**

**ELLINWOOD & ROSS  
by (signed) WILLIAM A. EVANS**

**WAE:H  
Registered—R.R.R.**

## NATIONAL LABOR RELATIONS BOARD

WASHINGTON, D. C.

IN THE MATTER OF

PHELPS DODGE CORPORATION, a corpo-  
ration

and

INTERNATIONAL UNION OF MINE, MILL,  
& SMELTER WORKERS, LOCAL No. 30.

CASE

No. C-500

**Notice of Hearing.**

PLEASE TAKE NOTICE that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Tuesday, July 11, 1939 at 2:00 p. m. or as soon thereafter as the Board may hear you, in Room 326, Shoreham Building, Fifteenth and H. Streets, N. W., Washington, D. C., for the purpose of oral argument in the above entitled matter. Argument will be limited to one-half hour for each party, and you are hereby advised that in view of the Board's docket no request for additional time made at the hearing will be granted.

You may appear and be heard if you so desire.

Dated, Washington, D. C., June 29, 1939.

NATHAN WITT

NATHAN WITT

Secretary

[SEAL.]



**Telegram From Denison Kitchel to J. Warren Madden.**

**WESTERN UNION**

**NB45 1 110 NL-VN Bronxville NY 29**

**J WARREN MADDEN, CHAIRMAN NATIONAL LABOR RELATIONS  
BOARD—SHOREHAM BLDG WASHDC—**

Have just sent following wire to Secretary Witt quote  
re Pehlps Dodge Case Number C-500 have just received  
telegraphic advice from my office in Phonix Ariz of July 11  
date for further oral argument as I will make appearance  
for respondent and have just undergone appendicitis opera-  
tion in local hospital here would greatly appreciate if argu-  
ment could be resét for July 20th 25th or 27th any one of  
these dates would be satisfactory and would immediately  
precede my return to Arizona following period of recupera-  
tion kindly advise by wire to undersigned at 33 Valley Road  
Bronxville NY unquote under these circumstances would  
certainly appreciate Board granting this request regards—

**DENISON KITCHEL.**

**C-500 20 25 27 33.**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

IN THE MATTER OF  
PHELPS DODGE CORPORATION, a corpo-  
ration  
and  
INTERNATIONAL UNION OF MINE, MILL,  
& SMELTER WORKERS, LOCAL NO. 30.

CASE  
No. C-500

**Notice of Postponement of Hearing.**

PLEASE TAKE NOTICE that the hearing for the purpose of oral argument previously scheduled in this matter for Tuesday, July 11, 1939, at 2:00 p. m., in Room 326, Shoreham Building, Fifteenth and H. Streets, N. W., Washington, D. C., is hereby postponed to Thursday, July 20, 1939, at 10:00 a. m. or as soon thereafter as the Board may hear you, at the same place.

Dated, Washington, D. C., June 30, 1939.

By direction of the Board:

NATHAN WITT

NATHAN WITT  
Secretary

[SEAL.]

**Telegram, Dated June 30, 1939.**

**TELEGRAM**

Official Business—Government Rates

**JUNE 30, 1939**

**PHELPS DODGE CORPORATION  
BISBEE, ARIZONA**

**ELLINWOOD & ROSS  
807 TITLE & TRUST BLDG.  
PHOENIX, ARIZONA**

**INTERNATIONAL UNION OF MINZ, MILL &  
SMELTER WORKERS, LOCAL No. 30  
c/o JOHN P. FOLBY  
BOX 3336  
LOWELL, ARIZONA**

**DENISON KITCHEL  
33 VALLEY ROAD  
BRONXVILLE, NEW YORK**

**TOWNE J. NYLANDER, DIRECTOR 21ST REGION  
NATIONAL LABOR RELATIONS BOARD  
808 U. S. POST OFFICE & COURT HOUSE  
SPRING & TEMPLE STREETS  
LOS ANGELES, CALIFORNIA**

**Re PHELPS DODGE CORPORATION, Case C-500. Further oral  
argument postponed to July 20.**

**NATHAN WITT, Secretary  
NATIONAL LABOR RELATIONS BOARD**



**Appearances at Hearing.****UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**IN THE MATTER OF  
PHELPS DODGE CORPORATION, a corpo-  
ration**

**and**

**INTERNATIONAL UNION OF MINE, MILL  
AND SMELTER WORKERS, LOCAL No. 30.**

**CASE  
No. C-500**

**Room 442  
Shoreham Building  
Washington, D. C.**

**A hearing was held in the above matter for the purpose  
of ORAL ARGUMENT at the above place on July 20, 1939 at  
10:00 a. m.**

**BEFORE:**

**J. Warren Madden, Chairman  
Edwin S. Smith, Member  
William M. Leiserson, Member**

**APPEARANCES:**

**Henry Fox, of Counsel to the Board**

**For the Company:**

**Denison Kitchel**

**807 Title Trust Building, Phoenix, Arizona**

**For the Union:**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

IN THE MATTER OF  
PHELPS DODGE CORPORATION, a corpo-  
ration  
and  
INTERNATIONAL UNION OF MINE, MILL  
AND SMELTER WORKERS, LOCAL NO. 30.

CASE  
No. C-500

File in  
Informal File  
J

MR. DAVID PERSINGER, for the Board.

ELLINWOOD & ROSS by MR. DENNISON KITCHEL  
and MR. WILLIAM A. EVANS, of Phoenix,  
Ariz., for the respondent.

MR. HENRY J. FOX, of counsel to the Board.

**Decision and Order.**

**STATEMENT OF THE CASE.**

Upon charges and amended charges duly filed on June 7, 1937, and December 30, 1937, respectively, by the International Union of Mine, Mill and Smelter Workers, Local No. 30, herein called the Union, the National Labor Relations Board, herein called the Board, by Towne J. Nylander, Regional Director for the Twenty-first Region (Los Angeles, California), issued and duly served its complaint dated January 10, 1938, against Phelps Dodge Corporation, New York City, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the mean-

*Decision and Order.*

ing of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

With respect to the unfair labor practices the complaint, in substance, alleged that: (1) by its refusal to reinstate certain specified individuals employed at its Copper Queen Mine, Bisbee, Arizona, because they had joined and assisted the Union and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection, the respondent did discriminate and is discriminating in regard to their hire and tenure of employment and did thus discourage and is thus discouraging membership in the Union; and (2) by its failure to reinstate said individuals, the respondent did interfere with, restrain, and coerce its employees and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondent filed an answer, dated January 20, 1938, admitting in part and denying in part the allegations of the complaint concerning its business,<sup>1</sup> denying that the alleged unfair labor practices affect commerce, and further denying that it had engaged in or was engaging in the alleged unfair labor practices.

On January 10, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the respondent, the Union, and the Employees' Association.

Pursuant to notice, a hearing was held in Bisbee, Arizona, from January 27 through February 3, 1938, before Thomas H. Kennedy, the Trial Examiner duly designated by the Board. The Board and the respondent appeared by counsel and participated in the hearing. Officials and members of the Union were present and testified, but otherwise the Union did not participate in the hearing. Full opportunity to be heard, to examine and cross-examine

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(1) See Section 1, *infra*.



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witnesses, and to introduce evidence bearing on the issues was afforded to all parties. During the course of the hearing, by stipulation between counsel for the Board and the respondent, the complaint and charge were amended by the addition of one name. Upon motion of counsel for the Board, corrections were made in the names listed in the complaint.

At the commencement of the hearing the counsel for the respondent filed six written motions to dismiss the complaint on the ground that it was insufficient. The Trial Examiner severally denied them. The rulings in respect thereto are affirmed. At the close of the Board's case and again at the conclusion of the taking of testimony, the respondent made nine different motions to dismiss the complaint as to various individuals and in its entirety. The Trial Examiner denied these motions. We affirm his rulings only so far as they are consistent with the findings, conclusions, and order, hereinafter set forth.<sup>2</sup>

Upon motion of counsel for the Board, the Trial Examiner dismissed the complaint as to Bert Bethel, T. N. Curtis, and John J. McKelvey. At the conclusion of the hearing, upon motion of counsel for the respondent, with acquiescence of counsel for the Board, the Trial Examiner dismissed the complaint as to Earl Worden. During the course of the hearing the Trial Examiner made several other rulings on motions and on objections to the admission of evidence besides those already considered. The Board has reviewed all these rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On March 16, 1938, the Trial Examiner filed his Intermediate Report in which he found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act, and recommended

(2) The Trial Examiner subsequently recommended the dismissal of the complaint as to certain of the individuals included in these motions.

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that the respondent be required to cease and desist from such practices and to offer reinstatement with back pay to 38 persons and back pay alone to 7 persons found to have been discriminatorily refused reinstatement. On April 2, 1938, the respondent's exceptions to the Intermediate Report and to various rulings of the Trial Examiner, were docketed.

On April 1, 1938, the respondent requested permission to file a brief and for oral argument. Pursuant to notice, a hearing was held before the Board on May 5, 1938, and July 20, 1939, in Washington, D. C., for the purpose of such oral argument. In each instance the respondent was represented by counsel but the Union did not appear.

On January 11, 1939, counsel for the Board and counsel for the respondent, with the consent of the Union, entered into a stipulation relating to certain pay-roll data. The stipulation is hereby made part of the record.

The Board has considered the exceptions to the Intermediate Report and the brief filed by the respondent and, save as consistent with the findings, conclusions, and order hereinafter set forth, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

**FINDING OF FACT****I. THE BUSINESS OF THE RESPONDENT<sup>3</sup>**

Phelps Dodge Corporation is a New York corporation with its principal office in New York City. The business of the respondent and its subsidiaries comprises operations in the copper industry, which include mining, milling, smelting, refining, and fabricating. Gold and silver are also recovered from the respondent's ores. In addition to marketing copper in refinery shapes, copper and copper

(3) Most of the facts in this section are derived from stipulations between counsel and the Registration Statement, signed May 24, 1937, filed by the respondent with the Securities and Exchange Commission.

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alloys are also marketed in the form of products fabricated by a subsidiary.

The respondent conducts its copper mining operations at Bisbee, Jerome, Ajo, and Morenci, all in Arizona.<sup>4</sup> It operates smelting plants at Douglas, Clarkdale, and Clifton, Arizona. A wholly owned subsidiary of the respondent, Nichols Copper Company, engages in both smelting and refining at Laurel Hill, New York City, and in refining at El Paso, Texas. In addition to refining the respondent's production, the Nichols Copper Company carries on a custom business, including both purchase and treatment of ores, blister, and scrap.

Another wholly owned subsidiary of the respondent, Phelps Dodge Copper Products Corporation, operates fabricating and manufacturing plants located at Bayway, New Jersey; Fort Wayne, Indiana; Yonkers, New York; and Los Angeles, California. Products of these plants include a great variety of copper and copper alloy manufactures. Other activities of the respondent and its subsidiaries include the operation of a coal mine at Dawson, New Mexico, a railroad between Jerome and Clarkdale, Arizona, and the operation and maintenance of general merchandise stores and other services in the localities in which its mining properties are situated.<sup>5</sup>

The proceedings in this case are concerned only with the respondent's Copper Queen Branch, Mines Division, situated in the Warren Mining District at Bisbee, Arizona.

In 1936 the Copper Queen Branch, Mines Division, hereafter referred to as the Mines Division, produced 795,946 dry tons of ore. Of this, 785,061 tons of copper smelting

(4) The Moctezuma Copper Company and the Compania Minera de San Carlos, S. A., both in Mexico, are mining companies owned by the respondent.

(5) Among these subsidiaries are the following utilities: Ajo Improvement Company, Warren Company, The Morenci Water Company, and Upper Verde Public Utilities Company, all doing business in Arizona; Mercantile corporations: Phelps Dodge Mercantile Company, doing business in New Mexico and Arizona, and New Cornelia Cooperative Mercantile Company, doing business in Arizona; and the Cochise Publishing Company, Bisbee, Arizona.



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ore were shipped to the smelter of the Copper Queen Branch, Smelter Division, located at Douglas, Arizona; 10,453 tons of basic sulphide ore were shipped to the smelter of the American Smelting and Refining Company situated in El Paso, Texas; and 432 tons of silver-lead ore were shipped to the refinery of the Nichols Copper Company, also located in El Paso, Texas. Of the 967,249 dry tons of ore produced by the Mines Division in 1937, 200 tons of silver-lead ore were sent to the Nichols Copper Company Refinery at El Paso, Texas, while the rest was sent to the smelter at Douglas, Arizona.

In the course of its operations at the Mines Division in 1936, the respondent used 593,347,000 cubic feet of natural gas, purchased from the El Paso Natural Gas Company and transported by pipe line from the State of New Mexico. In 1937 it obtained 698,959,000 cubic feet of natural gas from the same source. There were shipped in from outside of Arizona 22,841 and 37,177 barrels of fuel oil in 1936 and 1937, respectively, for use in the operations of the Mines Division.

On June 7, 1935, there was a total of 941 men on the Mines Division pay roll, while on January 1, 1938, there was a total of 1,414 employees.

All of the ore produced at the Mines Division ultimately finds its way into interstate commerce. The basic sulphide ore and the silver-lead ore, constituting about 1 per cent of the ore mined by the Division, are shipped directly in interstate commerce to smelters and refineries at El Paso, Texas. The remaining ore produced by the Mines Division is sent first to the respondent's Copper Queen Branch, Smelter Division, at Douglas, Arizona. Ores are also received at this smelter from mining companies, owned by the respondent, located at Morenci and Ajo, Arizona, and in Mexico. The entire output of the Douglas Smelter is transported in interstate commerce to the refinery of the respondent's wholly owned subsidiary, Nichols Copper Company, at

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El Paso, Texas, where it is converted into various copper and copper alloy products. Thus, although the ore produced by the Mines Division may lose its identity, the record clearly establishes that it all moves in interstate commerce. The products of the El Paso refinery are shipped to the various branches of the Phelps Dodge Copper Products Corporation, located in New York, New Jersey, Indiana, and California, as well as to other purchasers. At the various branches of the Phelps Dodge Copper Products Corporation, the copper, together with that shipped in from the refinery of the Nichols Copper Company located at Laurel Hill, New York, is manufactured into a large variety of products which are then sold, distributed, and shipped in interstate commerce. During the course of the conversion of the ore into copper products at the smelter and refinery, it is mingled with other ores and treated with substances which have been shipped in interstate commerce.

## II. THE ORGANIZATION INVOLVED

International Union of Mine, Mill and Smelter Workers, Local No. 30, is a labor organization affiliated with the Committee for Industrial Organization,\* admitting to membership employees of the respondent.

## III. THE UNFAIR LABOR PRACTICES

### A. Background of the unfair labor practices

In 1933 the Union was organized at Bisbee, Arizona, and secured some membership among the employees at the respondent's Copper Queen branch. On about June 1, 1935, most of the union men were working in one section of the mine known as the Cole shaft, where they had been segregated by the respondent. The respondent denied the fact of segregation, but it is evidenced incontrovertibly by the first paragraph of a letter dated June 10, 1935, from

(6) Now Congress of Industrial Organizations.

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P. G. Beckett, vice president and general manager in Bisbee, to Louis S. Cates, president of the corporation, located in New York City. The letter states, "Last week at Bisbee the Mine Department sent over to the Cole Shaft four or five non-union men to fill vacancies in that mine. As you know, the personnel of the Cole Mine is largely union, as we have tried to segregate the union men there."

On about June 1, 1935, eight non-union men were transferred to work in the Cole shaft. Friction developed between the union and non-union workers. Thereupon, several union members pursued a course of conduct which endangered the comfort and, to some extent, the safety of the non-union men. The latter made complaints to the management concerning the conduct of the union men. The management investigated the complaints and on June 6, 1935, discharged eight union members working in the Cole shaft.<sup>7</sup> These discharges, which occurred prior to July 5, 1935, the effective date of the Act, are not in issue under the pleadings, and we make no findings with respect to them.

On June 7, the day following the discharges, the union officers called a meeting to advise the members of the discharges and to determine the Union's course of action. The consensus of opinion at this meeting, as described by William Day, one of the eight discharged union employees, was

That the time had come that something had to be done immediately. We couldn't stand for this slaughter. . . . They are canning men in groups, and it was a matter of a very few days until all union men would go in the same manner.

The meeting closed with a virtually unanimous vote in favor of a strike to be effective from the following Monday morning, June 10.

(7) The following individuals included in the complaint as allegedly having been subsequently discriminatorily refused employment by the respondent were among these eight: William M. Day and Levi Crandall.



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On June 10, 1935, the strike commenced and a picket line was formed. A number of union members and sympathetic non-union men, constituting somewhat less than 10 per cent of the respondent's 950 employees, went out on strike. The mine was not closed but continued to operate on a curtailed basis for several weeks until it resumed normal operations. By June 28, 1935, all the strikers' jobs had been filled.<sup>8</sup>

On August 9, 1935, the Union made an application for the reinstatement of the strikers and the men discharged on June 6, 1935. On this occasion, the respondent refused to reinstate any of the strikers on the ground that their jobs had been filled. On August 23, 1935, a similar request was made by representatives of the Union and a similar reply was given by the respondent.<sup>9</sup>

On August 24, 1935, the Union officially terminated the strike, and the picket line disbanded. In the period from August 24, 1935, until the date of the hearing, a number of the strikers made individual applications for reinstatement, but none of them was reinstated.

### *B. Refusals to reinstate*

The record establishes beyond question that the respondent was actively opposed to the Union from a period antedating the strike. Counsel for the respondent and counsel for the Board stipulated *inter alia* and we find "... that just prior to and during the progress of the strike, respondent corporation had the Local under surveillance, but ... that that surveillance was discontinued a few months after the strike was concluded and has not been recontinued at any time since."

(8) Murray A. Bateman, the respondent's employment manager, testified that within the first week after the strike commenced a few of the strikers abandoned the strike and returned to work. However, he named only Owen Western. The respondent does not contend that any of the other strikers were ever reinstated.

(9) That these requests were considered by the respondent to be applications for reinstatement of the strikers is admitted by the respondent in its brief wherein it states that the requests were refused because "their jobs had been filled."

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By virtue of its espionage, immediately prior to the strike, the respondent was enabled to prepare for it. After gauging the probable effectiveness of the strike the respondent determined to resist any effort at settlement and to use the opportunity it afforded to eliminate permanently the Union from its plant. On June 10, 1935, the day the strike began, P. G. Beckett, the respondent's vice president and general manager at Bisbee, Arizona, wrote Louis S. Cates, the respondent's president in New York City, a letter which states in part:

I am sorry, of course, that this thing [strike] has come about, but, honestly, I feel that it had to come sometime and our union friends are so deplorably weak at the present time that it might just as well come now as later. For some time their feeling has been that they might just as well try and pull a strike as continue to lose out in the way they have been doing and finally get sunk without making a little "play" first.

It is never wise, of course, to under-estimate these things, but at the present writing it does not look very serious. I presume the next move will be that the union men will holler for help from somebody and want arbitration, which we shall decline.

Murray A. Bateman, the respondent's employment manager who had full authority over the employment of workers subject only to general policy instructions issued by his superiors, testified, and we find, that about a week after the commencement of the strike he was instructed by Captain Hodgson, manager of the mines, to "go slow" on reinstating any of the individuals who had gone on strike and who had appeared on the picket line. Bateman further stated that this instruction was never altered.

On August 6, 1935, a few days prior to the Union's unsuccessful effort on August 9, 1935, to obtain reinstatement

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of the strikers, P. G. Beckett again wrote a letter to Louis S. Cates. The second paragraph reads:

The State Federation of Labor people had a meeting in Tucson the other day, as per the enclosed clipping. I understand that a Federation committee of local people, some of them Douglas boys, has been appointed to see the management and find out if they can act as conciliators, etc. They will, of course, be told that there is no way that they can help.

Evidence of what occurred at the conference of August 9, 1935, is contained in a comprehensive memorandum, dated August 10, 1935, written by H. C. Henrie, assistant manager, to P. G. Beckett. Henrie reported, *inter alia*, that "Mr. Barkdoll advised the committee that it would be impossible to reinstate these men who had quit the service of the Company. Their jobs had been filled and the present working force would not stand for their being reinstated." Henrie further disclosed that later in the meeting, "We again advised the committee that the men who had quit could not be reinstated."

As we have already indicated, on August 23, 1935, a group application for reinstatement of the strikers was again made by the Union. The discussions which took place are described in a memorandum dated August 24, 1935, written by H. C. Henrie, who represented the respondent at the conference, to P. G. Beckett.

In his memorandum covering the conference of August 23, 1935, Henri relates, *inter alia*:

Mr. Potter<sup>10</sup> then inquired what the Company could do to settle the present trouble, and stated that if the men who still remained in the District were put back to work the strike could be settled.

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(10) William Day, Dave Lytle, and A. B. Potter represented the Union.



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I advised the Committee that two conferences had been held on this matter. . . . The position of the Company as outlined in the two former conferences had not changed, and there was nothing new to add on the subject.

The news of the termination of the strike on August 24, 1935, was announced to Beckett in the form of a postscript attached to Henrie's memorandum of the same date.<sup>11</sup> The postscript reads as follows:

August 26, 1935.

The Bisbee Miners' Union on Saturday, August 24th, voted to terminate the present strike.

The vote, which was by secret ballot, resulted in thirty votes for terminating the strike and ten votes for continuing.

We may experience a little difficulty from some of the men who will seek reinstatement, since I am advised that the Officers of the Union told their members at Saturday night's meeting that many of them would be re-employed by the Company.

The local Union has advised the International Officers that the strike has been terminated.

Other evidence of the respondent's studied discrimination against the strikers is found in the notations regarding their strike activities made by the respondent on their individual employment cards. These notations were typewritten upon the employment records of all excepting a few of the individuals involved in the complaint. In over 25 cases

(11) The evidence concerning espionage was developed at the hearing when Henrie was confronted with this memorandum as well as certain telegrams dated August 25, 1935, announcing the cessation of the strike.

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there is a notation to the effect that the employee appeared on the picket line. A few samples of the notations follow:<sup>12</sup>

Walked out when strike was called—Whole family also—Was on picket line all during strike—Arrested for beating up Larry Kuder.

Walked out when strike was called and picketed, as well did his wife.

Walked out when strike was called—Was on picket line as well was his wife and mother.

Walked out when strike was called—with all the rest of the family—Was on picket line through strike.

Did not report for work when strike was called—bad actor on picket line.

Walked out when strike was called and he and wife picketed all during strike.

Bateman, the employment manager, explained that he noted the employees' appearance on the picket line solely for the purpose of dropping them from the pay roll. The notations on the cards recorded above controvert this explanation since the ascertainment of the fact that the striker had left his employment did not require the detailed notations of the individual's and his family's strike activity as recorded above. We find that the respondent compiled a permanent record of the strike activities of its employees and utilized it as a "blacklist" in excluding the strikers from its employ.

The record is replete with anti-union statements attributed by applicants to Bateman. According to the applicants, in these conversations, Bateman assigned their concerted strike activity as the reason for denying them reinstatement. We shall describe only some of the conversations.

(12) They appeared on the respective employment cards of Grover D. Windsor, Clyde Bigelow, William Henry Bigelow, William H. Windsor, William Edward Sharp, and H. D. Edge.

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Montague Reed, one of the strikers, testified as follows: During the course of the strike, on June 21, while calling for his pay check, he encountered Bateman who inquired whether he had removed his clothes from the locker room. Reed responded, "No, I haven't. The strike isn't over yet and I haven't moved them." Bateman thereupon advised Reed, "Well, we want you to clean them out because as far as you fellows are concerned the strike is never going to be ended for you." Bateman admitted that he requested Reed to empty his locker but denied making any remarks relative to the strike.

Jesse Edge, a striker, testified to the following effect: He called for his pay slip in Bateman's office on about June 22, 1935. Upon this occasion Bateman asked him why he did not return to work. When Edge responded that he "was out on strike," Bateman informed him that if he did not go back he would never work for the company again. This conversation was not denied by Bateman other than by its inclusion under Bateman's general denial that he never made any statements to strikers pertaining to the Union or the strike.

William Day testified to the effect that by August 21, 1935, the Union realized that it was doomed to defeat and sought to put the men back to work. Early on that morning, according to Day, about 25 or 30 pickets gathered behind a similar sized group of applicants at the employment office. The following excerpts from the record describe Day's version of what then transpired:

Q. And Mr. Bateman, you say, came out onto the platform and said what? A. He said, "Is there any miners here?"

Q. Did anyone reply? A. I was the first man that spoke up. I says, "Yes, quite a bunch of us. How about a job?" He says, "Nothing doing." Irving Caldwell was standing by the side of me. He was a miner; he was a striker. He says, "What about



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my job?" And from that it was repeated on up. They was kind of in a line on the outside of the young kids there. We call them "rustlers."

Q. In other words, the crowd was of two groups: The rustlers close to the porch, and the pickets behind them away from the porch? A. The pickets were on the outside of the crowd that come up there to rustle.

Q. I see. A. What you might say, in the same group. However, they were closest.

Q. And others called out, "What about my job?"

A. A good many others called and says, "What about my job?" It was repeated right on around.

Q. Did Mr. Bateman make any reply? A. He says,—shook his head. He says, "There's nothing doing." He says, "You fellows will never work for the Phelps Dodge Company again." I says, "Wait a minute! Now, just who do you refer to as "You fellows?" He turns back to me and he says, "You strikers."

Q. Was anything further said? A. Yes. I said, "Well, you must have told I. V. Pruitt (sheriff of Cochise County) that. He has informed two or three times the boys that we could never go to work again."

Q. Did Mr. Bateman make any reply? A. He said, "I never told Pruitt that, but," he says, "I'm telling you," just in about that tone of voice.

That portion of Day's testimony which attributes to Bateman the statement that the strikers would never work for the respondent again was corroborated by the testimony of four other witnesses, all strikers, who were present on that occasion. On the other hand Bateman's denial finds some support in the testimony of W. H. Crane, Irvine Earl Newton, Earl Herbert, and W. E. Simpson.

Simpson admits that he heard someone shout, "How about my job?" but testified that Bateman made no answer thereto.

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Crane was hired by the respondent on August 22, 1935. His testimony is so vague and unrelated to the facts that we can give it no credence whatsoever.

Newton testified that he was hired on August 22 and was not present on the preceding day. His testimony in other respects is also unconvincing. If we are to credit this witness' testimony concerning the date of his employment, then his testimony regarding the August 21 incident is of no value since he would not have been present.

Herbert, the last witness who substantiated Bateman's denial of the statement allegedly made on August 21, 1935, was employed on September 25, 1935. He testified that he "rustled" on August 21, 1935. When asked how he recalled the date, August 21, 1935, he gave the following explanation at the hearing:

Q. How do you remember the exact date although you don't remember any other dates except the one on which you got your job? A. That was the first time I really got in to talk with Mr. Bateman, and I went home and talked to the wife, and she said, "Well, remember it. We might want to refer to it."

Q. Your wife suggested that you remember that date? A. Yes.

Q. Did she say why you might want to refer to it? A. No, not exactly.

This witness testified also that on August 21, 1935, he preceded Bateman into the employment office. Thus it is possible that Bateman might have made the controverted statement in the brief interval which elapsed before he followed the witness into the employment office.

Lester F. Bethel testified that about 5 days after the strike ended he spoke to Bateman about a job. Bethel claims Bateman said that "the company had never expressed themselves as to what they were going to do with the striking men." Bethel testified that he returned to see Bateman in

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December 1935 and that on this occasion, Bateman remarked, "You have an outstanding record, signed by Harry Lavender, but I cannot make no exceptions in your case." Bethel further testified that in May 1936 he met Bateman in the bus waiting room in Lowell and that in response to his query Bateman advised him that union men were not yet being hired.

Frank Peterson testified as follows: About a week after the strike was over he solicited a job from Bateman. In reply to Bateman's inquiry, Peterson admitted that he had served on the picket line. Thereupon he was told that "the company hadn't decided yet what they was going to do with us fellows."

Martin Vaclav testified that in the latter part of August within a week after the strike ceased Bateman answered his request for a job by saying, "that there was no need for me to come up there because he couldn't give me a job because I was one of the men that come out on strike."

Anson Perry Windsor testified that Bateman denied his application for employment in either the last part of August or the first part of September 1935. Windsor claims that Bateman told him that "there wasn't nothing for me, or 'any of my kind,'" and that Bateman's explanation of this latter remark was that they had taken a too important part in the strike.

Joe Henry Dunkerson testified that his efforts to obtain employment with the respondent several days after the strike met with failure. He claims that Bateman told him that he had no chance for a job and that they had done nothing about the strikers yet.

Paul Amaro testified to the following effect: He sought employment from the respondent in the first week of September 1935. Bateman advised him that "he could not consider a job for me or any other striking miner."

William Graham testified as follows: In the first week of September 1935, he asked Bateman if there was any



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chance of going to work for the respondent. Bateman replied that "the committee had to pass on all of the men that were hired, and the committee would not pass on any man that came out on strike." Bateman did not give any particulars concerning the committee to which he referred.

Clyde Bigelow testified that in September 1935 he requested employment from Bateman and was refused on the ground that "they hadn't reinstated any of the striking miners yet." Clyde Bigelow testified also that he made another unsuccessful effort to get a job from Bateman in December 1936. The following excerpt from the record describes Bigelow's account of what was said:

Q. What did you say to Mr. Bateman at that time?

A. I asked him if I could get a job now, and he said, "What? Back again?" I said, "Yes." He said, "Well, you're a glutton for punishment." "Well," I said, "What have they decided to do?" "Well," he said, "we ain't going to reinstate any of the men." "Well," I said, "Will there be any use of me rustling again?" And he said, "No."

Edgar Lewis Hargus testified as follows: Sometime in the last part of October or in November 1935 he applied to Bateman for a job. In response to his query, "How's the chance to go back to work?" Bateman replied, "The company will never hire you, Ed, or none of the fellows that was on strike or on the picket line."

Vernon Dell Curtis testified as follows: In October or November 1935 he inquired of Bateman, "How's the chance to go to work? Its pretty tough bucking relief." Bateman's only response was, "There's no chance of the likes of you to get a foothold in this camp again." He happened to meet Bateman in a recreation place in the summer of 1936. In reply to his request for a job, Bateman answered, "In 300 years we will give you fellows a job again." Bateman admitted making this statement but explained that he

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was not on duty at the time and that he does not always speak in a serious vein in his conversations.

Frank Erkkila testified that about November 1, 1935, Bateman answered his application for employment with, "Well, you were in the picket line, weren't you?"

Wilfred Davis Mortenson testified that the last of November or the first of December 1935, his request for a job was refused by Bateman, who said, "Mortenson, if you want a job you will have to go to a union camp to get it.— There is nothing in Bisbee for you."

Henry Waters testified that in December 1936 he asked Bateman for a job and that Bateman told him that "he couldn't do a thing for me" and that "you just as well go to a union camp."

The foregoing statements which the above witnesses attributed to Bateman, with one exception already noted, were denied by Bateman either specifically or under a general denial that he had ever made remarks of that nature. We do not credit his denial for various reasons. First, a large number of witnesses whose credibility we have no reason to doubt testified to statements of the same tenor made by him on different occasions in response to requests for employment. Second, the statements attributed to Bateman are consistent with and explained by the respondent's determination to deny reinstatement to strikers, as revealed by other evidence heretofore discussed. Finally, consideration of all Bateman's testimony does not impress us with its reliability. For instance, he testified that he was ignorant of the policy of segregating union members in the Cole shaft just prior to the strike. Since the evidence established the existence of that policy, it seems unlikely to us that the respondent's employment manager, whose duties involved the handling of personnel problems, would be unaware of the policy. In view of the respondent's admitted acts of espionage and detailed records of strikers' activities, the same conclusion applies to Bateman's assertion that he possessed only slight information concern-

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ing who were members of the Union. Upon all the evidence we find that Bateman did, in substance, make the statements ascribed to him by the complaining witnesses.

Montague Reed spoke to Keith Davey in June 1936 when Davey was substituting as employment manager while Bateman was on vacation. Reed testified and we find as follows with respect to a conversation that took place in a bar at Brewery Gulch: He asked Davey "If there was any chance of going to work for the Queen again," stating "if there was I would come and rustle." Davey replied that "there never was any chance for me to come back there and go to work and no others fellows that was out on strike." Davey did not testify at the hearing.

W. M. Day testified that on December 8, 1937, he applied for a job from J. G. Berlendis, employment manager who replaced Bateman about August 1, 1937. Day testified to the following interview:

"Well", he says, "did you ever work for the Company before?"

I says, "Yes, I worked quite a few years for the company." "I know that you have got my record and there is no use in going into any delay or anything of that kind. I have worked here and we had a little trouble here in 1935, and I come out on strike." I says, "Of course, you have that record and I have not been able to get back to work, but," I says, "do you fellows aim to hold that against me?"

"Well," he says, "I don't know whether we do or not." But he didn't tell me to come back.

That the respondent's hostility to the Union was not altered or abated during the years succeeding the strike is evidenced by correspondence in July 1937 between the respondent's officials concerning a new organizational campaign of the Union. On or about July 13, 1937, the union organizers handed out literature outside the respondent's gates. The respondent's attitude towards this development



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is reflected by the following letter written by H. M. Laverder, general manager:

July 14, 1937

**AIR MAIL**

MR. L. S. CATES, President,  
Phelps Dodge Corporation,  
40 Wall Street,  
New York, N. Y.

DEAR MR. CATES:—

Yesterday, Tuesday, near the entrance to the Junction and Campbell Mines were groups of C. I. O. distributing hand-bills, a sample of which is enclosed. Some of these distributors were former employees of Phelps Dodge who went on strike in 1935 and were subsequently employed by the Shattuck-Denn. Whether any outside organizers were present has not yet been determined.

The incident in itself is unimportant except that it shows a change in tactics. While literature of a similar nature has been previously distributed in the Bisbee District, this marks the first time since 1935 that they have attempted solicitation on or adjoining Phelps Dodge property. The thought occurs that the C. I. O. is attempting a "Ford Demonstration" [sic] in the hope that we will counter with some aggressive measure which would give them a wonderful opportunity to cry "oppression" and appeal to the N. L. R. B. for a hearing, which would be granted without a shadow of doubt. We have instructed our watchmen to ignore these groups so long as they stay outside the company fenced property and are cautioning the employees to likewise ignore them. This, I think is the most effective measure and will be our present policy if the C. I. O. continues their propaganda.

We are hopeful that any open conflict can be avoided but the situation in the District is such that a clash

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between the two groups might occur at any time. I was told, confidentially, that a showdown is inevitable between the Union and Shattuck-Denn. The 3rd of July night shift was turned back at the collar of the Denn Shaft by the leaders and this and other acts indicate that the Union may at any time insist upon a closed shop with check-off which I am told will not be granted.

I am not alarmed over this latest move but, am simply passing it on for your information.

Yours very truly

HML-B  
Encl.

General Manager

A few days later Lavender sent the following letter to Cates with respect to the same incident:

July 17, 1937

**AIR MAIL**

MR. L. S. CATES, President,  
Phelps Dodge Corporation,  
40 Wall Street,  
New York, N. Y.

DEAR MR. CATES:—

I am enclosing herewith a copy of the latest handbill passed out at the gates of the Junction and Campbell shafts, yesterday, Friday afternoon. Shuper, state organizer for C. I. O., is in charge of these men who again resumed distribution of this literature. About eight men were stationed near the Junction gate and four at the Campbell.

We will continue our policy of ignoring their presence as long as they stay outside the property fence, and will attempt to have the men and authorities do likewise. As before explained, it is so very evident the objective they are asking that we are determined not to play into their hands.

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We have reviewed the evidence relating to the respondent's attitude toward the Union and its adherents who participated in the strike. There remains for consideration the questions of whether or not there were jobs available for the strikers<sup>13</sup> after the strike and, if so, whether the strikers were denied reinstatement for discriminatory reasons.

(13) The respondent in a stipulation, dated January 11, 1939, provided the following statistics relative to its pay roll. On August 9, 1935, there were 1,012 persons on the pay roll of the Copper Queen Branch, Mines Division. Between August 9, 1935, and January 27, 1938, the date of the hearing, the respondent experienced the following pay-roll fluctuations:

Month	Number Hired	Number Leaving
August 1935 (from 9th on).....	24	69
September 1935 .....	35	53
October 1935 .....	56	22
November 1935 .....	27	11
December 1935 .....	27	16
January 1936 .....	63	22
February 1936 .....	31	21
March 1936 .....	45	16
April 1936 .....	56	24
May 1936 .....	95	18
June 1936 .....	45	35
July 1936 .....	74	36
August 1936 .....	112	44
September 1936 .....	132	57
October 1936 .....	78	42
November 1936 .....	70	36
December 1936 .....	75	30
January 1937 .....	145	75
February 1937 .....	144	66
March 1937 .....	127	53
April 1937 .....	146	57
May 1937 .....	166	59
June 1937 .....	146	62
July 1937 .....	68	61
August 1937 .....	109	85
September 1937 .....	87	137
October 1937 .....	22	370
November 1937 .....	19	82
December 1937 .....	9	186
January 1938 (to 27th).....	16	36
Totals .....	2,249	1,891

The net gain in the number of employees as a result of the turn-over between August 9, 1935 and January 27, 1938, the date of the hearing, amounted to 358. Of the total number of 2,249 occasions on which persons were hired, approximately 1,800 were hired either as muckers or miners. Only about 475 of these miners and muckers were listed as having previous experience in the respondent's service. Out of the total of 1,891 persons who left the respondent's employ, approximately 1,400 were either muckers or miners.



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Of the 45 named in the complaint as discriminatorily denied reinstatement by the respondent, all except 9<sup>14</sup> had at sometime worked for the respondent as miners or muckers. If the respondent was hiring muckers and miners at the time the 45 were denied reinstatement it is clear that at least 36 of them could not have been refused employment because of any lack of experience. The nine who had not previously worked for the respondent as miners or muckers had apparently been employed at jobs requiring greater skill.<sup>15</sup> Inasmuch as employees are often hired as muckers and are later advanced to more skilled employment, and in view of the fact that there is a considerable amount of interchange of positions among the respondent's employees, as manifested in the work history of the employees involved in the complaint, we find no reason to believe that persons engaged in the type of work performed by these nine could not have been reemployed as muckers.

Between August 9, 1935, the date of the strikers' first mass application for reinstatement, and August 24, 1935, the date of the termination of the strike, the respondent hired 21 miners and muckers, 15 of whom had not been in the respondent's employ prior to that time.<sup>16</sup> Between August 9, 1935, and January 1, 1936, the respondent hired 40 miners and 116 muckers. Of these, only 7 had previously worked for the respondent more recently than the 45 persons involved in the complaint. Thus, it is clear that there

(14) These are J. P. Foley, E. A. Curtis, George Gerhardt, William E. Sharp, Michal Mibelich, P. C. Lytle, Jesse Edge, J. M. Morris, and Herschel J. Montgomery.

(15) The persons named in the preceding footnote had last worked as motor swamper, boilermaker's helper, powdermen, motorman, steel sharpener, blacksmith's helper, timberman, and repairman.

(16) The stipulation entered into by the parties after the close of the hearing showed all persons employed or reemployed by the respondent at its Mines Division between August 9, 1935, and January 27, 1936. In August and September 1935 the number of employees who were dropped from the pay roll of the respondent exceeded the number who were hired. This is explained in part by the fact that in both of these months a large proportion of the persons dropped from the pay roll were watchmen. In every other month, however, until September 1937, the number of persons hired exceeded the number of persons dropped from the respondent's pay roll.

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were at least 149 jobs for miners and muckers during that period for which those who participated in the strike might have been hired. We therefore conclude that before January 1, 1936, there were jobs available for all of the 45 against whom the respondent is charged with discriminating.

The record in its entirety compels the conclusion that the respondent prior to the effective date of the Act definitely embarked upon and thereafter systematically pursued a policy designed to destroy the Union. Its segregation of union members in the Cole shaft, its admitted espionage activities, its inter-office correspondence, its instructions to the employment manager, its blacklist of the strikers, its statements to individual strikers who sought reinstatement—all demonstrate a single purposeful course of conduct. Its refusal after August 9, 1935, to reinstate any striker or rehire any person associated with the Union either as picketer or otherwise, despite the substantial turnover among its workers, represented the consummation of that purpose and plan. We find that from the inception of the strike the respondent adopted and thereafter executed a systematic policy of excluding strikers and persons associated with the Union from the ranks of its employees.

The respondent maintains that of the 45 persons involved in the complaint 37 voluntarily left its employ on June 10, 1935, and the remaining 8<sup>17</sup> were not in its employ on or immediately prior to that date. It urges, therefore, that none of the complaining witnesses were its employees on July 5, 1935, the effective date of the Act, and hence are not within the protection afforded by the Act.<sup>18</sup> We shall

(17) These eight individuals are William Day, Levi Crandall, John P. Foley, William Daugherty, Grover Cornet, Leonard Guess, Vernon Dell Curtis, and Richard Johnson. We find *infra* that Grover Cornet was an employee of the respondent within the meaning of the Act on June 10, 1935, the day the strike began.

(18) This aspect of the respondent's contention was framed in its brief in terms of remedy—viz. " \* \* \* the Board has no authority to order reinstatement or back pay."



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examine this contention first with respect to the 38<sup>19</sup> individuals who ceased work on June 10, 1935, and then with respect to the other 7.

Section 2 (3) of the Act provides:

The term "employee" shall include any employee . . . and shall include any individual whose work has ceased as a consequence of, or in any connection with, any current labor dispute, or because of any unfair labor practice . . .

Section 2 (9) of the Act provides:

The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment . . .

We find that the strike was a labor dispute<sup>20</sup> involving a controversy over the tenure of employment of the eight union members discharged on June 8, 1935; that the strikers' work ceased as a consequence of that labor dispute which was current on July 5, 1935,<sup>21</sup> the effective date of

(19) This figure includes Grover Cornet. See footnote 17, *supra*.

(20) The respondent urges that for various reasons the action of its employees on June 10, 1935, did not constitute a strike and that such individuals did not acquire the status of striking employees. There is no merit in that contention.

(21) The respondent contends that even if there was a strike on June 10, 1935, the strike ceased to be current before July 5, 1935, because the strikers' jobs had been filled before that date, and that hence the strikers did not enjoy the status of striking employees on that date. While the filling of jobs is one of the criteria for determining whether a strike continues in existence, it is neither determinative nor controlling on the issue. See the comment on subsection (2) of Section 21 of Chapter 38 of the Restatement of the Law of Torts where the precise point at issue is treated in the following language: "Under the definition in Subsection (2), of the Restatement of Tort, Proposed Final Draft No. 6 (April 4, 1939), workers are employees in their relation to the employer against whom they are on strike, or by whom they are locked out, so long as the strike or lockout continues. This does not mean that they retain all their rights, powers, privileges and duties as employees. It does not mean that they are entitled to wages, for example, or that they have the power to subject the employer to liability to third persons. It means merely that so long as the strike or lockout continues they retain the privileges and liabilities of concerted action by employees. For this purpose a strike does not necessarily end when the employer fills the places left by the strikers.

(Footnote continued on next page.)



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the Act; and that the strikers retained their status as striking employees on that date.<sup>22</sup> As such striking employees they were entitled to protection against the unfair labor practices denounced by the Act.<sup>23</sup>

While it is true that the strikers' jobs had been filled by June 28, 1935, they occupied the status of striking employees on August 9, 1935, the date of their first mass application for reinstatement,<sup>24</sup> and as striking employees were entitled to consideration upon a non-discriminatory basis for reinstatement to jobs as vacancies occurred. In the period between August 9, 1935, and August 24, 1935, 21 vacancies were filled, but the respondent, despite knowledge of the strikers' desire to return to work, reinstated none of them.<sup>25</sup> Thus, in accordance with its predetermined and fixed policy,

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The strike continues so long as the workers have not abandoned it by taking permanent employment elsewhere or otherwise, even though the employer has filled their places and is operating at normal capacity. When workers are still continuing their concerted strike activities and their efforts to prevent normal operations, their replacement cannot be regarded as permanent. It is probably true today that most men taking jobs so made vacant realize from the outset how tenuous is their hold. On the other hand, the mere fact that a strike or lockout has not been officially called off, as by a union vote or other declaration, is not conclusive evidence of its continued existence. It may be abandoned without such official action. The issue is one of fact; in the case of a strike, whether or not the employees are still seeking by concerted action to return to their work and achieve some or all of their demands. When the concerted action has ceased, the individual action of workers who remain aggrieved is not subject to the rules stated in this Chapter" (see SS 766-774).

(22) The respondent urges that the Act should not be given retroactive application. In our view the Act is being applied not retroactively but prospectively, since the employees were striking employees on July 5, 1935.

(23) *Mackay Radio & Telegraph Co. v. N. L. R. B.*, 304 U. S. 333.

(24) The strikers made two mass applications for reinstatement, on August 9, 1935, and August 23, 1935, and the majority of the strikers made one or more individual applications either before or after those dates, yet none of them was reinstated. Some strikers did not apply individually after August 23, 1935. We find that in view of the respondent's determination not to reinstate any of them, which was known to the strikers, individual application was futile and became unnecessary. See *Matter of Sunshine Mining Company and International Union of Mine, Mill and Smelter Workers*, 7 N. L. R. B. 1212; *Matter of Carlisle Lumber Co. and Lumber & Sawmill Workers' Union, Local 2511, Onalaska, Washington*, and *Associated Employees of Onalaska, Inc., Intervenor*, 2 N. L. R. B. 248, aff'd in 94 F. (2d) 138 (C. C. A. 9) and 99 F. (2d) 333 (C. C. A. 9).

(25) Although all the strikers could not have been reinstated during that period since only 21 jobs were available, each of them had a valid claim to consideration for reinstatement to available jobs.

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the respondent denied them consideration for reinstatement simply because of their strike and union activities. In barring the strikers from employment when jobs were available, solely because of the fact that they were strikers, we find that the respondent unlawfully discriminated against all of them to discourage membership in a labor organization and thereby committed unfair labor practices within the meaning of Section 8 (1) and (3) of the Act. We further find that on and after August 24, 1935, when the strike was formally ended, the strikers retained their status as employees since between August 9, 1935, and the former date, the resumption of their status as working employees had been discriminatorily denied them by the respondent's unfair labor practices. After August 24, 1935, the respondent continued its discrimination against them although large numbers of jobs became available.

However, even if, contrary to our finding, after the termination of the strike on August 24, 1935, the status of the 38 strikers was not that of employees within the meaning of the Act, the Act protected them against discrimination to discourage membership in a labor organization. The seven individuals who were admittedly not employees were likewise protected. On this precise point we repeat what we have recently said in *Matter of Waumbec Mills, Inc.* and *United Textile Workers of America*<sup>26</sup>:

It is well established that the Act is not intended to interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The respondent's contention, however, that the Act has no application whatever prior to the formation of the employer-employee relationship is clearly and specifically contradicted by the terms of Section 8 (3) of the Act which provides, "It shall be an unfair labor practice for an employer—By discrimination in regard to hire or tenure of employ-



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ment or any term or condition of employment to encourage or discourage membership in any labor organization: \* \* \*". A reference to the legislative history of the Act indicates that the provision means exactly what it says. In addition, the broad purpose of the Act to further industrial peace by "encouraging the practice and procedure of collective bargaining" is irreconcilable with the proposition that employers may debar union applicants with impunity.

Section 8 (1) of the Act likewise covers a discriminatory refusal to hire as well as a discriminatory discharge. Simply stated, Section 8 (1) makes it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their rights of self-organization and collective bargaining. One form of interference, restraint, and coercion is the discharge for union membership or activities of an individual already employed. Another such form is the refusal to hire an individual seeking employment for the same reasons. Each is an open warning to all persons already employed, and it is the interfering, restraining and coercive effect upon these employees that constitutes the violation of Section 8 (1) in both cases. Hence it is immaterial whether the individual discriminated against is already an employee or merely an applicant for employment.

Since discrimination in hiring is as telling a form of interference with self-organization as any other and as much an incitement to disputes burdening and obstructing commerce, such discrimination is plainly in conflict with both the policy and purposes of the Act.

We have hereinabove found the respondent systematically applied a general policy of refusing to reinstate or



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hire persons who participated in the strike. This mass discrimination for engaging in concerted activities in behalf of the Union, however, is negated in some individual instances by other factors which will be discussed as we consider each individual case below.

WILLIAM M. DAY was first employed by the Calumet & Arizona Company in April 1929. In 1931 that company and the respondent merged. After the merger Day continued in the respondent's employ. At the end of April 1935 Day was transferred from the Campbell shaft to the Cole shaft. On June 6, 1935, while coming off the shift, Day was discharged by the mine foreman, Ratteree. The circumstances surrounding the discharge of Day and seven other persons on June 6, 1935, have already been set forth in the description of the events preceding the strike.<sup>27</sup>

We find that Day was discharged prior to July 5, 1935, and was denied reinstatement, not because of his union membership and activities, but for other reasons.

LEVI CRANDALL was first employed by the Calumet & Arizona Company in 1927. After the merger he worked continuously until he was discharged on June 6, 1935. The reasons and circumstances attending his discharge are the same as those applicable to Day.

We find that Crandall was discharged prior to July 5, 1935, and was denied reinstatement, not because of his union membership and activities, but for other reasons.

JOHN PATRICK FOLEY entered the employment of the Calumet & Arizona Mining Company in 1926. At the time of the merger in 1931 he was transferred to the pay roll of the respondent. He worked continuously for the respondent until January 15, 1935. There was testimony to the effect that for a few months prior to this date the foreman had complained that Foley was not doing a sufficient amount of work. On this date he obtained a 30-day furlough from

(27) See Section III, A, *supra*.

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the respondent. He thereupon set out for Mojave, California, where he found a job. He overstayed his furlough without notifying the respondent. Foley returned to Bisbee on May 30 and sought employment with the respondent on June 1, 1935. Bateman asked him to return in a few days. Foley testified and we find that he returned on June 4, 1935, and that Bateman said, "John, as far as safety and working conditions are, your record is good, but they have something against you" and that Bateman further stated, "John, you need not never come back here no more . . . I'm hiring men, but I won't want you." Thus Foley was refused reinstatement prior to the effective date of the Act, for reasons which, while equivocal, bear no apparent relationship to his union membership or activities.

Foley was a member of the Union and served on the picket line throughout the strike. He never applied for work after June 4, 1935.

We find that the respondent refused employment to Foley, not because of his union membership and activities, but for other reasons.

HERSCHEL J. MONTGOMERY was first employed by the respondent in 1909. He worked at intermittent periods for the respondent until June 10, 1935, when he joined his fellow union members out on strike. In regard to Montgomery, A. C. Reifsnider, the respondent's master mechanic, testified to the following effect: Montgomery came under Reifsnider's jurisdiction in 1931 when he was assigned to the then idle concentrator as a watchman. Instead of performing the duties involved in that task he was repeatedly absent from the premises both during the daytime and at night. He was never given permission to leave and he was repeatedly warned to stay on the job. After 2 or 3 months he was relieved of that assignment and placed in one of the mine change rooms as a change-room attendant. The transfer was made because of his failure to attend to his duties as a watchman. He failed to give satisfaction on the new



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assignment and after a few months was transferred to the boiler shop as a boilermaker's helper.

In the boiler shop Montgomery still evidenced an indifferent attitude toward his job. He spent more time talking and arguing than taking care of his work. In spite of warnings, this continued and in July 1934 he was discharged. Because of his long service record with respondent, however, he was given another chance and put back to work. Reifsnider further testified that he would not willingly have Montgomery in his employ in the mechanical department because his service record was unsatisfactory and because he was more of a "demoralizing spirit" than "an asset." There was further testimony by Reifsnider that it was just a matter of months before Montgomery would have been discharged if the strike had not intervened and that only his long service record had persuaded the respondent to carry him on so long in spite of his unsatisfactory services.

Although Montgomery denied that he was ever incompetent in his work, his employment card substantiates in part, at least, the testimony of the respondent with regard to him.

In view of the fact that the respondent did not deem Montgomery's employment record an obstacle to his employment prior to the strike and in view of our findings concerning the respondent's general policy with respect to reinstatement of strikers, we are not persuaded that it was the cause of the respondent's refusal to reinstate him. We find that the respondent refused employment to Montgomery because of his union membership and activities.

We find that Montgomery has not secured regular employment which is substantially equivalent to his employment with the respondent.<sup>22</sup>

WILLIAM DAUGHERTY, a member of the Union, was first employed by the respondent in 1925. He worked intermit-

(22) In its brief, the respondent states that it does not contend that Montgomery has secured substantially equivalent employment.



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tently for the respondent until August 1931 when he was laid off because of a reduction in force. He was reemployed by the respondent in June 1934. His employment card lists him as being dropped on October 15, 1934. The card further contains remarks that Daugherty does not like to work and that not only were his services unsatisfactory but that his surly disposition was disagreeable to the bosses.

Although he was in Bisbee at the time the strike occurred he did not appear on the picket line. He was a member of the Union but he was not paid up in his dues nor did he attend any meetings. The only meeting of the Union which he ever attended was the night that he joined the Union, the date of which he was unable to fix more accurately than that it was in 1934 or 1935.

After the discontinuance of the strike, the first time that Daugherty applied for a job with the respondent was about January 15, 1937. Bateman told him that "If there is an opening over at the Cole I will send you over there." Daugherty was thereupon given a physical examination by the physician. The next morning Daugherty returned to the employment office and claims that Bateman said, "Daugherty, I can't send you up there. There was some men down to see me and they said you called them 'scabs,' and I don't want no trouble up there." Daugherty further claims that Bateman said, "There is no use for you coming here for any more work." Bateman denied these statements and said that he rejected Daugherty's application because he failed to pass a physical examination. Daugherty's testimony makes no mention of the result of the physical examination. The respondent introduced no further proof to substantiate Bateman's claim relative to Daugherty's failure to pass the physical examination.

In view of the fact that Daugherty's testimony concerning Bateman's statement is consonant with the respondent's policy, and in view of our previous findings with respect to Bateman's testimony, we find that the respondent discrimi-

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nated with respect to the hire of Daugherty because of his union membership and activity.

EDGAR LEWIS HARGUS was first employed by the respondent in 1924 for a period of about 3 months. His last continuous employment with the respondent was from 1927 to June 10, 1935. Prior to the strike he had worked as a miner at a wage of \$5 per day. As a member of the Union he went out on strike on June 10, 1935. He served on the picket line until the last part of July. He sought employment from the respondent in the last part of either October or November 1935. Bateman informed him "The company will never hire you, Ed, or none of the fellows that was on strike or on the picket line." Hargus never applied again for a job with the respondent.

Upon the basis of all the evidence we find that the respondent denied reinstatement to Hargus because he struck and engaged in concerted activities in behalf of the Union.

After June 10, 1935, for about 9 months Hargus worked intermittently at relief jobs and a variety of temporary jobs. In February or March 1936 he was employed by the Shattuck Denn Mining Company as a miner. This mine is located about a half mile from the Junction shaft of respondent's mine. He retained this job until December 1936 when he left it for a better job with the Banner Mining Company in Lordsburg, New Mexico. He worked at this new job as shift boss for a period of 8 months. He left this job because he did not like the location and was tired of it. In October 1937 he returned to the employ of Shattuck Denn in Bisbee. Since that date he was worked there continuously as a miner. His rate of pay at the time of the hearing was \$5.48 per day. At the hearing Hargus expressed a desire to return to the employ of the respondent.

The respondent contends that Hargus as well as the other complaining witnesses who were ultimately employed by the Shattuck Denn Mining Company have secured regular



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and substantially equivalent employment. We reject this contention for reasons stated below.

There is evidence that many of the working conditions and rates of pay in the Shattuck Denn Mine approximate those in the respondent's mine. Yet there are marked and substantial differences between the two companies. First and most important is the difference with respect to continuity and security of employment based upon the relative size of the two companies. At the time of the hearing the respondent employed over approximately 1400 persons while Shattuck Denn employed approximately 200 persons. The importance of this difference in size was manifested during the period from 1931 through 1934. Shattuck Denn ceased its operations from 1932 to 1934. Although the respondent reduced its force during these same years, nevertheless it continued to operate. A large number of the complaining witnesses were employed by the respondent during that period when Shattuck Denn employees were without work.

Second, the record discloses that the respondent made necessary lay-offs on the basis of seniority. The possession of seniority rights is patently a highly desirable adjunct to employment, in an industry where payroll fluctuations are as prevalent as in the mining industry.

Third, the respondent's employees desire to maintain continuous service records. That the respondent itself attached importance to continuous service records is established by its practice of awarding a present to employees in recognition of 10 years of continuous service without a lost-time accident.

Upon the basis of all the factors enumerated, we find that Hargus had not secured regular and substantially equivalent employment.<sup>29</sup>

(29) See *Matter of Mooresville Cotton Mills and Local No. 1221, United Textile Workers of America*, 15 N. L. R. B., No. 43.



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JOHN HENRY KEY, a member of the Union, was first employed by the respondent in 1928 and worked continuously until the depression commenced. He worked again for the respondent for about a month in 1931. In 1934 he was reemployed by the respondent and worked steadily until he joined the strike on June 10, 1935. He was classified as a miner on his employment card and was earning \$5 per day at the time of the strike. He served on the picket line throughout the entire strike.

Two or three days before the end of the strike, presumably August 21, 1935, in response to Bateman's request for miners, Key, along with Day and several other strikers, asked for reinstatement. Bateman's refusal has already been described. About 6 months after the strike was discontinued Key again solicited a job from Bateman. Bateman advised him to return later after he had taken "his case up." Key returned in about a week and was told, "I can't do a thing for you."

Upon the basis of all the evidence we find that the respondent denied reinstatement to Key because he struck and engaged in concerted activities in behalf of the Union.

A résumé of the jobs which Key occupied between August 9, 1935, and the date of the hearing follows: The first work that he secured was with Shattuck Denn Mining Company in September 1935. He worked there as a shaftman for about 2½ months and voluntarily quit when that company started concreting. The concreting operations seriously affected his health. During that period he earned in excess of \$5 per day. In the middle of January 1936 Key journeyed to Idaho where he obtained a job as shaftman with the Sunshize Mining Company in Kellogg about February 1, 1936. After about 2 months he quit that job because it was too cold. After doing some relief work his next job was as a timberman working for Jim McKenna, a lessee. He commenced working for McKenna about May 1936. He was discharged after 2 weeks. After he ceased working for McKenna he

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returned to the employ of the Shattuck Denn as a machine miner in August 1936. He has worked there steadily since that date. His rate of pay at the time of the hearing was in excess of \$5 per day. Key expressed a desire to return to the employ of the respondent because as he stated, " . . . I have a family to feed, and it is the best place to work. I figure a man can live longer and it's more sure of your job. Shattuck Denn . . . you may have a job today, and it is a small outfit, and they may be closed down next week." These considerations weighed so greatly with Key that he, like several other complaining witnesses, indicated that he would be willing to return to the respondent at a reduced wage rate if necessary.

The respondent claims that Key had obtained regular and substantially equivalent employment. The same factors, discussed in our consideration of Hargus, which induced us to find that employment with the Shattuck Denn Mining Company does not constitute substantially equivalent employment, influences us to find that employment with the Sunshine Mining Company of Kellogg, Idaho, is likewise not substantially equivalent employment. In addition to the loss of seniority rights and continuous service record, there are the additional factors that it is distant from Key's established home and is unduly cold.

We find that Key has not obtained other regular and substantially equivalent employment.

GEORGE EDWARD FRAZEE was first employed by the respondent as a mucker in March 1934. At the time he went out on strike on June 10, 1935, he was employed as a miner at a wage rate of \$5 per day. He picketed until the end of the strike. He never applied for work with the respondent because he felt that it would be useless. Two or three days after commencement of the strike he heard Bateman say, "If you boys don't go back to work tomorrow you will never work for the company again." Shortly before the strike ceased (apparently August 21, 1935), he was present when

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Bateman stated that the strikers would never work for the respondent again. For reasons heretofore stated, we regard it as unnecessary for Frazee to have made individual application for reinstatement.

Upon the basis of all the evidence we find that the respondent denied reinstatement to Frazee because he struck and engaged in concerted activities in behalf of the Union.

Between the cessation of the strike and February 1937 when Frazee was employed by the Shattuck Denn Mining Company as a miner, he was intermittently employed at various temporary jobs and relief work. Frazee has worked steadily for the Shattuck Denn Mining Company at the rate of \$5.48 per day. He expressed a preference for his old job at the respondent's mine even if it involved a return to the wages he was receiving on June 10, 1935.<sup>30</sup>

The respondent claimed that Frazee had obtained regular and substantially equivalent employment. On some of the temporary jobs on which he has worked since August 1935, he has earned more money per day than he was making while with the respondent. In spite of this fact, however, because of the other factors of seniority, continuous service record as well as distance from his established home, we find that Frazee has not secured regular and substantially equivalent employment.

EDWARD BOWDEN, a union member, first began to work for the respondent in 1920. He was laid off in 1921 and reinstated in 1922. He first began to work continuously for the respondent in 1927. He worked as a miner from that date until June 10, 1935, when he joined the picket line. His last rate of pay while employed by the respondent was \$5 per day. On his employment record there are several remarks denoting the excellent quality of his work. After the strike Bowden applied to Bateman for a job in the middle of

(30) Frazee was receiving \$5 per day as a miner in June 1935. The wage rate, apparently, has increased between that date and the time of the hearing, since there was ample testimony to the effect that the wage rates at the Shattuck Denn Mining Company followed those of the respondent exactly.



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September 1935. Bateman informed him that they had not yet made a disposition of his case and that it would be useless for him to rustle until they disposed of it. He never applied again.

Upon the basis of all the evidence we find that the respondent denied reinstatement to Bowden because he struck and engaged in concerted activities in behalf of the Union.

In March 1937 Bowden secured a job as a timberman with the Shattuck Denn Mining Company. At the time of the hearing, he was working there as a timberman at \$5.76 per day. During June 1935, until November of the same year, Bowden worked on relief 7 days per month. In November he obtained work with the Arizona Edison Company. There he earned at first \$4 per day for 6 days per week. Later he was paid a salary of \$110 per month, working every day in the week. Bowden expressed a desire to return to his old job with the respondent even if it necessitated a reduction in the present wage he was earning. We find that Bowden did not secure regular and substantially equivalent employment.

PAUL AMARO, a member of the Union, was employed in March 1934 and worked as a miner until he went on strike on June 10, 1935. He was earning \$5 per day. He appeared on the picket line throughout the entire strike. About the first week in September 1935 Amaro solicited a job from Bateman. He was told by Bateman that "he could not consider a job for me or any other striking miner." That was the last time Amaro applied for work with the respondent.

Upon the basis of all the evidence we find that the respondent denied reinstatement to Amaro because he struck and engaged in concerted activities in behalf of the Union.

In June 1936 Amaro secured a job as miner with the Shattuck Denn Mining Company. He was employed there steadily until the date of the hearing. He earns \$5.48 per day. Prior to this employment, besides some relief work, he worked with the Borianna Mining Company, Kingman,

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Idaho, from September 1935<sup>0</sup> until about March 1936. This labor paid him at the rate of \$4.50 per day, working every day in the week. Amaro prefers to return to his old job with the respondent even if it involves a reduction in the amount of wages he was currently earning.

The respondent claimed that Amaro had obtained regular and substantially equivalent employment. For the same reasons which we set forth in our consideration of the cases of Hargus and Key, we find that Amaro has not secured regular and substantially equivalent employment.

WILFRED DAVIS MORTENSON, a union member, commenced to work for the respondent in July 1929 and was laid off because of a reduction in force in 1930. He was reemployed as a mucker in April 1934 and worked continuously until the occurrence of the strike. At that date he was working as a miner at \$5 per day. He served on the picket line until the strike ceased. He applied to Bateman for a job sometime during the last of November or the first of December 1935. Bateman rejected his application saying, "Mortenson, if you want a job you will have to go to a union camp to get it. There is nothing in Bisbee for you." Mortenson has not applied since that occasion.

On the basis of all the evidence we find that the respondent denied reinstatement to Mortenson because he struck and engaged in concerted activities in behalf of the Union.

Since August 1936 Mortenson has been employed as a miner by the Shattuck Denn Mining Company. Since he has been there he has earned not less than \$5.48 per day. Prior to this job he was employed as a service station attendant on a commission basis in Douglas, Arizona. This job, which he obtained in the latter part of October 1935, yielded him an average income of approximately \$100 per month. Mortenson expressed a desire to return to the employ of the respondent.

The respondent claimed that Mortenson had obtained regular and substantially equivalent employment. For the

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same reasons set forth in our discussion of Hargus, we find that Mortenson has not secured regular and substantially equivalent employment.

ANSON PERRY WINDSOR, a union member, was first employed by the respondent in June 1934. He was listed as a mucker, earning \$4.40 per day. In March 1935 he was off on the sick list. When he joined the strike on June 10, 1935, he was still on the sick list. He was on the picket line throughout the strike. About the last of August or the first of September he applied to Bateman for reinstatement. He was told by Bateman that there was nothing for him or any of his "kind" because they "took too an important part in the strike."

On the basis of all the evidence we find that the respondent denied reinstatement to A. P. Windsor because he struck and engaged in concerted activities in behalf of the Union.

At the time of the hearing A. P. Windsor was employed by the Shattuck Denn Mining Company. He operated a slusher but was classified as a miner earning \$5.48 per day. He has held that job since November 23, 1936. Other employment which he has held since the strike includes a month of relief work and 9 months of work for a road contractor. When the latter job was completed he was laid off. His pay on the road job varied from \$4 to \$6 per day. At the hearing, A. P. Windsor expressed a desire to return to the employ of the respondent at his old wage in preference to his present job with Shattuck Denn.

For the same reasons we have given in the case of Hargus, we find A. P. Windsor has not secured regular and substantially equivalent employment.

EMERY ADELBERT CURTIS started to work for the Calumet & Arizona Mining Company in 1925. He worked for that concern until it merged with the respondent in 1931. Thereafter he continued to work for the respondent until the strike occurred. At the time of the strike he was working



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as a powderman, earning the same pay as a miner. He served on the picket line until almost the middle of August 1935. He did not apply for work with the respondent after the strike ceased because other strikers who tried told him of their failure.

Upon the basis of all the evidence we find that the respondent denied reinstatement to E. A. Curtis because he struck and engaged in concerted activities in behalf of the Union.

With the exception of a month's work for the Phoenix-Tempe Stone Company in the fall of 1935 and a week's work in 1937, E. A. Curtis has been occupied only by relief work. He did not apply for work other than relief work because he felt he was a little old. He would like to return to his old job with the respondent.

We find that E. A. Curtis has not obtained regular and substantially equivalent employment.<sup>31</sup>

TOM ABEDIN, a union member, spent 9½ years in the employ of the Calumet & Arizona Mining Company prior to its merger with the respondent in 1931. Thereafter he worked with the respondent as a miner until March 8, 1932, when he was laid off because of a reduction in force. On February 13, 1934, he was reemployed as a miner and worked until June 10, 1935, when he joined the strike. On the latter date he was earning \$5 per day. He served on the picket line every day throughout the duration of the strike. The first time he spoke to Bateman concerning a job was in January 1936 when he encountered him on the street in Lowell. He was told by Bateman that there was "No showing for us guys no more." He did not apply for a job sooner because several of his friends who had tried to secure employment had told him that it was useless for him to try. He has not applied for a job with the respondent at any time since that occasion.

(31) In its brief the respondent does not contend that E. A. Curtis has obtained substantially equivalent employment.

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On the basis of all the evidence we find that the respondent denied reinstatement to Abedin because he struck and engaged in concerted activities in behalf of the Union.

At the time of the hearing Abedin was employed as a miner at the Boras mine at the rate of \$5.50 per day. He obtained this job in November 1937. The work, however, was irregular. The only other employment, other than relief work, which Abedin had between the strike's cessation and the date of the hearing was a 2-month job as a miner for a lessor. He was laid off of this job with several other employees. In October 1936 the Shattuck Denn Mining Company rejected Abedin's application for a job because of kidney trouble.

The respondent claims that Abedin had obtained regular and substantially equivalent employment. For the same reasons we have set forth in the case of Hargus, we find that Abedin has not secured regular and substantially equivalent employment.

JOE HENRY DUNKERSON, a member of the Union, worked for the Calumet & Arizona Mining Company for 3½ years prior to its merger with the respondent. Since the merger, in 1931, he has worked for the respondent as a tool nipper until the event of the strike. He was classified on his employment card as a mucker. At the time he went on strike he was earning \$4.40 per day. He served on the picket line until 2 or 3 days before the discontinuance of the strike. Dunkerson applied for reinstatement with the respondent several days after the strike ceased. His request was refused by Bateman who told him that he had no chance for a job and that they had not done anything about the strikers yet. He has not applied for a job with the respondent since that occasion.

On the basis of all the evidence, we find that the respondent denied reinstatement to Dunkerson because he struck and engaged in concerted activities in behalf of the Union.

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On June 13, 1936, Dunkerson entered the employ of the Sunshine Mining Company at Kellogg, Idaho, where he worked for a period of 2 months. In spite of the fact that he received wages in excess of \$5.25 per day, he quit that job because he was not assured that it would be permanent. The only other work which Dunkerson had between the cessation of the strike and the date of the hearing, in addition to relief work, has been a short period of employment with the Banner Mine. His job with the Banner Mine terminated when he was taken ill.

The respondent claims that Dunkerson has secured regular and substantially equivalent employment. For the same reasons set forth in our discussion of Hargus and Key, we find that Dunkerson has not obtained regular and substantially equivalent employment.

GROVER D. WINDSOR, a member of the Union, started in the employ of the respondent on June 8, 1934, as a mucker. On June 10, 1935, when he went on strike, he was running a muck machine at \$5.24 per day. He served on the picket line every day until June 26. On or about November 1, 1935, he applied for a job with the respondent and his request was refused by Bateman, who said: "A hundred years after the next War I'll give you a job." He has not since applied for a job.

On the basis of all the evidence, we find that the respondent denied reinstatement to Grover D. Windsor because he struck and engaged in concerted activities in behalf of the Union.

Since November 1936 Grover D. Windsor has been employed by the Shattuck Denn Mining Company as a mucker, running a muck machine. He has not earned less than \$5.76 per day while on that job. Prior to obtaining that job he was occupied for a while with relief work and a construction job.

The respondent claims that Grover D. Windsor has obtained regular and substantially equivalent employment.



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For the same reasons set forth in our discussion of Hargus, we find that Grover D. Windsor has not obtained regular and substantially equivalent employment.

MARTIN VACLAV, a member of the Union, first started to work for the Calumet & Arizona Mining Company, approximately 4 years prior to the merger in 1931. At the time of the merger he was transferred to the pay roll of the respondent as a miner and worked continuously until he went on strike on June 10, 1935. He was earning \$5 per day just prior to the strike. He appeared on the picket line until the latter part of July. Within a week or so after the strike ceased, he solicited a job from Bateman and was informed that he could not be given a job because he had gone out on strike. That was the last time he applied for a job with the respondent.

On the basis of all the evidence, we find that the respondent denied reinstatement to Vaclav because he struck and engaged in concerted activities in behalf of the Union.

In January 1937 Vaclav entered the employ of the Shattuck Denn Mining Company as a mucker at the rate of \$4.84 per day. He remained there until May 1937 when he left their employ. He reentered the employ of the Shattuck Denn Mining Company in October 1937 as a miner at a rate which was never less than \$5.48 per day, and was so occupied at the time of the hearing. The only other employment which Vaclav had since the termination of the strike consisted of odd jobs of short duration. He expressed a preference for his old job with the respondent.

The respondent claims that Vaclav has obtained regular and substantially equivalent employment. For the same reasons set forth in our discussion of Hargus, we find that Vaclav has not obtained regular and substantially equivalent employment.

MONTAGUE REED has been intermittently employed by the respondent since 1924. On these previous occasions he was

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laid off because of reductions in force. In September 1933 he was reemployed by the respondent. At the time of the strike he was working as a miner, earning \$5 per day. Although he was not a member of the Union, he went on strike on June 11, 1935. He served on the picket line frequently until June 26, 1935. When he called for his pay check on June 21, during the course of the strike, Bateman instructed him to clean out his locker, saying that "as far as you fellows are concerned, the strike is never going to be ended for you." In June 1936 Reed encountered Keith Davey, who was temporarily acting as the respondent's employment agent, in a bar in Brewery Gulch. On this occasion Davey informed him that there was no chance for any of the strikers to return to the employ of the respondent. Reed has not applied for a job with the respondent since that occasion.

On the basis of all the evidence, we find that the respondent denied reinstatement to Reed because he struck and engaged in concerted activities in behalf of the Union.

Since August 14, 1936, Reed has been employed as a miner by the Shattuck Denn Mining Company, earning \$5.48 per day. The only other work which Reed had since the strike ceased was relief work. He expressed a preference to return to the employ of the respondent.

The respondent claims that Reed has secured regular and substantially equivalent employment. For the same reasons set forth in our discussion of Hargus, we find that Reed has not obtained regular and substantially equivalent employment.

MILTON WYNN commenced his employment with respondent in 1934, when he worked there for about 3 months. He was reemployed in June 1934 as a mucker. He worked continuously until he went out on strike on June 10, 1935. Just prior to the strike Wynn was operating a gunite machine, earning \$5.23 per day. Although he was formerly a member of the Union he ceased being a member prior to

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June 1935. He appeared on the picket line only once or twice. A week or two after the strike, Wynn encountered Bateman outside of office hours. Bateman told him that there was no chance of going to work and refused to give him a service recommendation letter to aid him in obtaining another job in Idaho. Wynn has not applied for a job with the respondent at any time since then.

The respondent moved to dismiss the complaint as to Wynn on the ground that he was not a member of the Union. It is immaterial that Wynn was not a member of the Union. He, in fact, was discriminated against because he engaged in concerted activity with other employees for mutual aid and protection under the direction of the Union. Such discrimination is intended to and has the necessary effect of discouraging membership in a labor organization and falls within the prohibition of Section 8 (3) of the Act.

Upon the basis of all the evidence, we find that the respondent denied reinstatement to Wynn because he struck and engaged in concerted activities in behalf of the Union.

In November 1935 Wynn obtained employment with the Inspiration Copper Company at Miami, Arizona, but quit that job after approximately a month because of a dispute over his wage rate. Other employment which Wynn has had since the strike ceased includes assisting attending a bar, and working at Parker Dam. At the time of the hearing he was still employed at bartending but was working only a few days a week.

The respondent claims that Wynn has secured regular and substantially equivalent employment. For the same reasons set forth in our discussion of Hargus, we find that Wynn has not obtained regular and substantially equivalent employment.

ALEXANDER KALASTRO, a member of the Union, was first employed by the respondent in August 1934. He worked continuously until June 12, 1935, when he went out on strike. At that time he was working as a swamper on a motor, earn-



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ing \$5 per day. He served on the picket line for only 1 day. After the termination of the strike in the latter part of August 1935 he applied to Bateman for a job and was told "Nothing doing." He has not applied for a job with the respondent since that time.

On the basis of all the evidence, we find that the respondent denied reinstatement to Kalastro because he struck and engaged in concerted activities in behalf of the Union.

Since February 1937 he has been continuously employed by the Shattuck Denn Mining Company as a miner, earning \$5.48 per day. At the time of the hearing the Shattuck Denn Company was working lay-offs on a turn-about system and there had been an interruption in the continuity of his employment. Prior to his employment with the Shattuck Denn Mining Company the only other jobs he had were relief work and odd jobs. He desires to return to his old job with the respondent even if it involves a reduction in pay.

The respondent claims that Kalastro has secured regular and substantially equivalent employment. For the same reasons set forth in our discussion of Hargus, we find that Kalastro has not obtained regular and substantially equivalent employment.

WILLIAM HENRY BIGELOW, a member of the Union, was first employed by the respondent in 1908 and worked intermittently thereafter. The last time he was laid off was in 1930 or 1931. He was reemployed in May 1934 as a miner, earning \$5 per day. He worked at this until he went out on strike on June 10, 1935. He served on the picket line off and on until August 21, 1935. He has never applied to the respondent for reinstatement because his brother, Clyde Bigelow, had applied and told him that there was no use applying.<sup>a</sup>

On the basis of all the evidence, we find the respondent denied reinstatement to William Henry Bigelow because he struck and engaged in concerted activities in behalf of the Union.

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In December 1936 he was hired by the Shattuck Denn Mining Company and has worked there continuously since. At the date of the hearing he was earning in excess of \$5 per day as a miner. Prior to the job with the Shattuck Denn Mining Company he had been occupied only by relief work and work on his own ranch.

The respondent claims that W. H. Bigelow has secured regular and substantially equivalent employment. For the same reasons set forth in our discussion of Hargus, we find that William Henry Bigelow has not obtained regular and substantially equivalent employment.

WILLIAM WINDSOR, a member of the Union, was first employed by the Calumet & Arizona Mining Company in 1925. He worked there irregularly until the merger, when there was a general lay-off. He was reemployed by the respondent in September 1933 as a miner. Within a week, however, he was put on as a helper on a motor, though when he went out on strike on June 10, 1935, he was working as a miner, earning \$5 per day.

He was on the picket line during the strike until about the middle of July. About the middle of September 1935 he solicited a job from Bateman and was told, "I have taken up a few cases like yours, but they don't know what they want to do about it." About 2 weeks later, Windsor's effort to get a job with the respondent met with a similar response. Since that date he has not applied for employment with the respondent.

On the basis of all the evidence, we find that the respondent denied reinstatement to Windsor because he struck and engaged in concerted activities in behalf of the Union.

Since December 2, 1936, Windsor has been continuously employed by the Shattuck Denn Mining Company. At the time of the hearing he was working as a flusherman at \$5.48 per day. Prior to this job his employment included relief work and work as a common laborer for a road construc-

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tion company. Windsor considers a job with the respondent preferable to the one that he presently has, because he believes that his return to the employ of the respondent would indicate that the blackball against him was lifted. This is of concern to him, since he stated that "if I got froze out at the Denn I would be through in this district as far as mining employment is concerned."

The respondent claims that Windsor has secured regular and substantially equivalent employment. For the same reasons set forth in our discussion of Hargus, we find that Windsor has not obtained regular and substantially equivalent employment.

ELLIS MERAN SCALES, a member of the Union, commenced to work for the respondent in February 1926. He worked continuously until he went out on strike in June 1935. At the time of the strike he was working as a motorman, earning \$5.24 per day. He served on the picket line until the last day of the strike. After the strike terminated, Scales applied for work some time between August 24 and August 28, 1935, on which occasion Bateman informed him that "he had other boys in a similar position and that he could not do anything for them." That was the last time Scales applied for work with respondent.

On the basis of all the evidence, we find that the respondent denied reinstatement to Scales because he struck and engaged in concerted activities in behalf of the Union.

Since October 28, 1936, he has been working steadily for the Shattuck Denn Mining Company. He was first employed there as a mucker but at the time of the hearing he was working as a finley operator at \$5.76 per day. Prior to obtaining the job with the Shattuck Denn Mining Company he had been occupied only by relief work and other casual employment. He worked in a mine for a lessor for about 3 months and was employed by a construction contractor for about 4 months.



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The respondent claims that Scales has secured regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Scales has not secured regular and substantially equivalent employment.

FRANK ERKKILA, a member of the Union, commenced to work for the respondent about June 1, 1934. He started as a mucker but when he went on strike on June 10, 1935, he was working as a miner, earning \$5 per day. He appeared on the picket line until the last week of the strike. On or about November 1, 1935, Erkkila sought employment from Bateman and was met with the response, "Well, you were on the picket line, weren't you?" Erkkila then related his straitened circumstances and requested information as to where he might find a job. Bateman mentioned the possibility of a job with the Miami Copper Company. That was the last time Erkkila sought employment with respondent.

On the basis of all the evidence, we find that the respondent has denied reinstatement to Erkkila because he struck and engaged in concert activities in behalf of the Union.

In the last part of January or February 1936 Erkkila entered the employ of the Shattuck Denn Mining Company. He started to work there as a mucker but at the time of the hearing he was working as a miner, earning \$5.48 per day. Prior to obtaining the job with the Shattuck Denn Mining Company, he was occupied only by some farming on his parents' ranch. Erkkila expressed a desire to return to the employ of respondent even if it involved a reduction in the pay he was currently earning.

The respondent claims that Erkkila has obtained regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Erkkila has not secured regular and substantially equivalent employment.

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LUKE SERTICH, a member of the Union, entered the employ of the respondent in 1924 and worked until a general lay-off in August 1930. He was reemployed by the respondent in September 1933 and worked for the respondent until he went on strike on June 10, 1935. At the time of the strike he was a trackman, earning \$5.24 per day. He served on the picket line until about a week before the termination of the strike. About the first part of July 1936 he applied for a job with the respondent. On that occasion Bateman told him he had no chance for a job. He has never tried to obtain employment with the respondent since that date.

On the basis of all the evidence we find that the respondent denied reinstatement to Sertich because he struck and engaged in concerted activities in behalf of the Union.

Since September 5, 1936, Sertich has been in the employ of the Shattuck Denn Mining Company. He started there as a miner but at the date of the hearing he was working as a timberman, earning \$5.76 per day. For almost a year succeeding the cessation of the strike, Sertich was enrolled in a C.C.C. camp. At the hearing Sertich expressed a preference for his old job with the respondent over his present employment with the Shattuck Denn Mining Company.

The respondent claims that Sertich has obtained regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Sertich has not secured regular and substantially equivalent employment.

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MERRELL ERNEST JOHNSON entered the employ of the Calumet & Arizona Mining Company in 1928 and worked for that concern until he was laid off at the time of the merger in 1931. He was reemployed by the respondent in 1934 as a tool nipper. He worked steadily for the respondent until he went out on strike on June 10, 1935. At the time of the strike he was working as a toplander's helper, earning \$4.40 per day. Although he was not a member of

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the Union at the time of the strike, he appeared on the picket line three or four times. About a week after the strike ceased he sought employment from Bateman. Bateman advised him that " \* \* \* there is not even any use of your looking for a job" and added, "You know the reason why." That was the last time he sought employment from the respondent.

On the basis of all the evidence we find that the respondent denied reinstatement to M. E. Johnson because he struck and engaged in concerted activities in behalf of the Union.

In February or March 1936 Johnson was employed by the Shattuck Denn Mining Company. He started out as a trammer, earning \$4.40 per day, but at the time of the hearing he was working as a sharpener's helper at \$5.76 per day. Until Johnson was employed by the Shattuck Denn Mining Company he had been unable to find any work other than relief work in the period succeeding the strike.

The respondent claims that M. E. Johnson had obtained regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Johnson has not secured regular and substantially equivalent employment.

GEORGE GERHARDT was first employed by the respondent in 1912 for about a year. He was reemployed by the respondent in 1915 and, with the exception of a brief lay-off in 1922, he worked until June 10, 1935, when he went out on strike. At the time of the strike he was working as a steel-sharpener, earning \$5.24 per day. He served on the picket line until July 3, 1935. About the middle of September he applied for work with the respondent. He was one of a group of applicants who were standing outside the respondent's employment office. This group, with the exception of Gerhardt, was composed of persons who had not participated in the strike. On this occasion Bateman ad-



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vised the group that there were no jobs available. Gerhardt never applied for work from the respondent thereafter.

On the basis of all the evidence, we find that the respondent denied reinstatement to Gerhardt because he struck and engaged in concerted activities in behalf of the Union.

Gerhardt was 62 years old at the time of the hearing and has obtained no employment since he went out on strike. After the termination of the strike Gerhardt was occupied only with relief work until the beginning of 1937. For a year prior to the hearing he was on direct relief because of a defective knee which bothered him when he did certain kinds of work. He has been afflicted with his knee trouble since 1913. It did not hinder the type of work he was engaged in while in the employ of the respondent.

We find that Gerhardt has not secured regular and substantially equivalent employment.<sup>32</sup>

WILLIAM GRAHAM, a member of the Union, entered the employ of the respondent in 1928 and left it after about a year and one-half. He was reemployed in June 1934 and worked until he went out on strike on June 10, 1935. Although he is classified on his employment record as a mucker, at the time of the strike he was working as a pocket man, earning \$4.40 per day. He served on the picket line throughout the duration of the strike. After the strike ceased he applied for a job from Bateman some time during the first week of September 1935. Bateman informed him that "the committee had to pass on all of the men that were hired" and that "the committee would not pass on any man that came out on strike." Bateman did not explain what committee he referred to. He did not apply for a job with the respondent thereafter.

On the basis of all the evidence, we find that the respondent denied reinstatement to Graham because he

(32) In its brief, the respondent stated that it did not contend that Gerhardt has secured substantially equivalent employment.

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struck and engaged in concerted activities in behalf of the Union.

On or about November 23, 1936, Graham was employed by the Shattuck Denn Mining Company. He has been in its employ continuously since that date. At the time of the hearing he was working as a raise man for \$5.48 per day. Before Graham entered the employ of the Shattuck Denn Mining Company he had been employed for about 8 or 9 months with the Borianio Mining Company in Kingman, Arizona. He also worked for the Sunshine Mining Company in Kellogg, Idaho, for several months. He left that job voluntarily because his boy was sick and he had to return home to Bisbee. For a short period immediately succeeding the termination of the strike, Graham worked on relief. Graham prefers his old job with the respondent to either his employment with the Sunshine Mining Company or his present job with the Shattuck Denn Mining Company.

The respondent claims Graham has obtained regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Graham has not secured regular and substantially equivalent employment.

WILLIAM EDWARD SHARP was first employed by the respondent in July 1929 and laid off because of a reduction in force in January 1930. He was reemployed by the respondent on June 7, 1935. Two days later he took his physical examination and he worked on June 10, 1935. The next day he went out on strike. He was employed as a blacksmith's helper but since he never went back to get his pay for the 1 day which he worked the record does not disclose his rate of pay. He was on the picket line until about August 1, 1935. About October 15, 1935, Sharp asked Bateman for a job. Bateman told him that he had no chance to get a job because of the trouble he was involved in during the strike. On another occasion in Morenci, Arizona, in September 1937, Sharp encountered Bateman and asked him

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concerning his chances for a job with the respondent's mine located in Morenci. Bateman informed him that it would do no good for him to rustle there because of the trouble in which he was involved in Bisbee. That was the last time he applied for work with the respondent.

On the basis of all the evidence, we find that the respondent denied reinstatement to Sharp because he struck and engaged in concerted activities in behalf of the Union.

About October 18, 1937, Sharp entered the employ of the Alpine Mining Company near El Freida, Arizona. At the time of the hearing he was disabled and receiving compensation. There is no evidence that his injury was such as to cause more than a temporary disability. His regular work at that time, however, was as a miner at the rate of \$5 per day. Starting in December 1936 he worked for a period of about 8 months as a miner with the Bonnie Mining Company at Lordsburg, New Mexico. He was paid at the rate of \$5 per day, working 7 days a week. In August 1937, because his father became ill, he was summoned home. When he returned to Lordsburg he was unable to obtain reinstatement to that job. For a period of 3 or 4 months prior to entering the employ of the Bonnie Mining Company, Sharp had a job as a hod-man operator. Between November 1935 and August 1936 he worked as a common laborer for a construction company.

The respondent claims that Sharp has obtained regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Sharp has not secured regular and substantially equivalent employment.

LESTER F. BETHEL, a member of the Union, entered the employ of the Calumet & Arizona Mining Company in 1925. After the merger he was employed by the respondent and worked continuously until June 10, 1935. At the time he went on strike he was working as a metorman at \$5.24 per day. He served on the picket line until about August 20,



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1935. About August 29, 1935, he requested a job from Bateman and was informed by him that " \* \* \* the company had never expressed themselves as to what they were going to do with the striking men." He advised Bethel to return at a later date. In December 1935 Bethel again inquired of Bateman concerning the prospects of a job. Bateman informed him as follows: "You have an outstanding record signed by Harry Lavender, but I cannot make no exceptions in your case." In May 1936 Bethel met Bateman in a bus station and in response to his query was informed that union men were not yet being hired.

On the basis of all the evidence, we find that the respondent denied reinstatement to Bethel because he struck and engaged in concerted activities in behalf of the Union.

On December 5, 1936, Bethel was employed by a Southern Pacific Railroad contractor. He has worked continuously at that job until the time of the hearing. He commenced to work at a salary of \$65 per month but in May 1937 was raised to \$130 per month. Before he obtained this job, besides relief work, he was employed for about 6 weeks for the Tungsten Production Company as a miner. After he was laid off by that company he worked for about a week for a construction company. The job with the Southern Pacific Railroad contractor was to terminate on February 13, 1938.

The respondent claims that L. F. Bethel has obtained regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Bethel has not secured regular and substantially equivalent employment.

MICHAEL MIHELICH, a member of the Union, worked for 15½ years with the Calumet & Arizona Mining Company prior to the merger in 1931. At that time he was transferred to the respondent's pay roll and worked continuously until he went out on strike on June 10, 1935. At the time of the strike he was employed as a timberman,

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earning \$5.24 per day. He served on the picket line. A few days after the discontinuance of the strike he asked Bateman concerning a job and was told "No job for you." On another occasion in September 1935 his request for a job met with a similar response. He has not applied for a job since that occasion.

On the basis of all the evidence, we find that the respondent denied reinstatement to Mihelich because he struck and engaged in concerted activities in behalf of the Union.

At the time of the hearing, Mihelich was not employed. After the termination of the strike he worked in a mine for a lessor for about a year. His pay on this job was in excess of \$5.50 per day. He was laid off on November 18, 1937, because the mine was shut down. Since that date he has not been occupied on any job at all.

The respondent claims that Mihelich has secured regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Mihelich has not secured regular and substantially equivalent employment.

PETE D. CARETTO, a member of the Union, completed 10 years of service with the Calumet & Arizona Mining Company prior to its merger with the respondent in 1931. At that time he was laid off until the spring of 1932 when he was reemployed by the respondent. He worked continuously until he went out on strike on June 10, 1935. At the time of the strike he was working as a topman, earning \$5 per day. Before he worked as a topman he also had worked as a miner and a cager. He served on the picket line during the course of the strike.

After the strike was over he did not apply for reinstatement because he felt it was useless to seek a job with respondent. He based this conclusion upon Bateman's statement of August 21, 1935, when Bateman informed him and the other strikers that the strikers would never work for the respondent again.

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On the basis of all the evidence, we find that the respondent denied reinstatement to Caretto because he struck and engaged in concerted activities in behalf of the Union.

At the time of the hearing he was working on relief work. In December 1936 he obtained a job as a miner for a lessor. He worked at this job for about 3½ months at the rate of \$5 per day. He left that employment because he did not like his employer. In January 1937 he entered the employ of another lessor and worked for him for about 2½ months. Here he received a mucker's pay which was \$4.40 per day. He left this job because the ground was too bad and he did not like the work there. He has been doing relief work since December 27, 1937. Shortly after the strike terminated he was employed by a dairy, working nights. He remained there only a short time because he did not care for the hours.

The respondent claims that Caretto has secured regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Caretto has not secured regular and substantially equivalent employment.

P. C. LYTLE, a member of the Union, entered the employ of the Calumet & Arizona Mining Company 4 years prior to its merger with the respondent. Thereafter he was transferred to the pay roll of the respondent and worked until he went out on strike. At the time of the strike Lytle was a repairman, earning \$5.24 per day. During the first part of the strike he was in ill health and was being treated through the respondent's medical facilities. On Saturday, June 15, 1935, Lytle visited the respondent's doctor to learn the results of a "picture" which had been taken earlier in the week. He was informed by respondent's doctor at that time that the office had given orders to cease furnishing him medical attention. Lytle did not appear on the picket line at any time. After the termination of the strike, sometime in September or October 1935, Lytle spoke to H. C. Henrie



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concerning a job. Henrie advised him to return the following evening for an answer. The next evening Henrie told him that nothing could be done for him. He has never applied for a job with respondent since that date.

On the basis of all the evidence, we find that the respondent denied reinstatement to Lytle because he struck and engaged in concerted activities in behalf of the Union.

In January 1936 Lytle commenced to work for the Hillside Mining Company at Hillside, Arizona, working as a miner at the rate of \$4 per day, seven days a week. At the end of 5½ months he was rated as a repairman and earned \$4.50 per day, seven days a week. After working as a repairman for 3½ months he voluntarily quit the employ of the Hillside Mining Company. On February 15, 1937, he was hired as a miner by a lessor and was paid \$5.48 per day. Shortly thereafter his rating and pay were increased. On June 19, 1937, however, he was laid off because of a reduction in force. About September 1, 1937, Lytle was employed as a mining timberman by the Sullivan Mining Company at the Star Mine in Idaho. He was paid at the rate of \$6.25 per day. At the end of six weeks he was injured and for a 2-week period thereafter was paid compensation. He did not apply for reinstatement with the Star Mine because he understood that his job would not be available if he wanted to go back to it. The doctor also advised him to get away from it. At the time of the hearing Lytle was occupied only by relief work in Bisbee. In addition to the work enumerated he has, since the termination of the strike, been employed at various times at other temporary jobs.

The respondent claims that Lytle has secured regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Lytle has not secured regular and substantially equivalent employment.

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JEASE EDGE, a member of the Union, was employed by the Calumet & Arizona Mining Company for 2½ years prior to the merger. Thereafter he was transferred to the pay roll of the respondent and worked continuously until he went out on strike on June 10, 1935. At the time of the strike he was working as a motorman, earning \$5.24 per day. He served on the picket line until about August 15, 1935. During the course of the strike, about June 22, he spoke to Bateman when he went in after his pay slip. On that occasion Bateman told him that if he did not return to work that he would never work for the company again. Because of that statement Edge has never applied for a job with the respondent since that occasion.

On the basis of all the evidence, we find that the respondent denied reinstatement to Edge because he struck and engaged in concerted activities in behalf of the Union.

Since July 23, 1937, Edge has been in the employ of the Shattuck Denn Mining Company. He is working there as a miner earning \$5.48 per day. Prior to his employment with the Shattuck Denn Mining Company he was occupied only with relief work and other temporary employment.

The respondent claims that Edge has secured regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Edge has not secured regular and substantially equivalent employment.

FRANK PETERSON, a member of the Union, was employed by the Calumet & Arizona Mining Company from February 22 to February 1930. He was reemployed by the respondent as a mucker in January 1933, and worked continuously until he went out on strike on June 10, 1935. Shortly before the occurrence of the strike he was working as a miner, earning \$5 per day. He served on the picket line. About a week after the discontinuance of the strike Peterson applied for reinstatement. Bateman informed him, however, that the respondent had not yet decided how it was

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going to dispose of the strikers. Ten days or two weeks after this occurrence, Peterson again sought employment from Bateman and again was refused.

On the basis of all the evidence, we find that the respondent denied reinstatement to Peterson because he struck and engaged in concerted activities in behalf of the Union.

At the time of the hearing Peterson was employed as a laborer earning \$4 per day. He has held that job since December 20, 1937. The work, however, is not steady work and he averages only about 4 days per week of work. For the most part since the termination of the strike, Peterson has held only relief jobs or temporary jobs as a common laborer.

We find that Peterson has not secured regular and substantially equivalent employment.<sup>33</sup>

BEN H. STRINGER, a member of the Union, was in the employ of the Calumet & Arizona Mining Company for 4 years prior to the merger with the respondent. He was reemployed by the respondent as a mucker in June 1934, and worked continuously until he went out on strike on June 10, 1935. At the time of the strike he was still working as a mucker but was receiving a miner's pay. He served on the picket line. A few days after the termination of the strike, Stringer asked Bateman for a job but was turned down. He again attempted to get a job with the respondent in December 1937, but was informed that the respondent was laying off men during that period.

On the basis of all the evidence, we find that the respondent denied reinstatement to Stringer because he struck and engaged in concerted activities in behalf of the Union.

Except for 18 days' work for the Shattuck Denn Mining Company in the spring of 1936, Stringer has been on relief since the termination of the strike.

(33) In its brief the respondent states that it does not contend that Peterson has secured substantially equivalent employment.



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The respondent claims that Stringer has secured regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Stringer has not secured regular and substantially equivalent employment.

GEORGE C. ROHRER, a member of the Union was employed for 3 years by the Calumet & Arizona Mining Company prior to the merger. Thereafter he was transferred to the pay roll of the respondent as a mucker and worked until June 10, 1935, when he went out on strike. At the time of the strike he was working as a motorman, earning \$5.24 per day. He served on the picket line during the course of the strike. About 2 weeks after the strike ceased he applied for a job from Bateman who said: "No, I can't give you a job." He has not applied for employment with respondent since that time.

On the basis of all the evidence, we find that the respondent denied reinstatement to Rohrer because he struck and engaged in concerted activities in behalf of the Union.

At the time of the hearing Rohrer was employed on relief work. Except for an occasional day's work on a farm he has been continuously occupied with relief work since the termination of the strike.

We find that Rohrer has not secured regular and substantially equivalent employment.<sup>34</sup>

CLYDE BIGELOW first entered the employ of the respondent in 1920 and thereafter worked intermittently for the respondent until 1932. In January 1934 he was reemployed by the respondent and worked steadily thereafter until he went out on strike on June 10, 1935. At the time of the strike he was working as a miner, earning \$5 per day. Although he was not a member of the Union he went out on strike. He did not appear on the picket line. After the strike was discon-

(34) In its brief the respondent states that it does not contend that Rohrer has secured substantially equivalent employment.

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tinued he applied for work with the respondent in September 1935. Bateman informed him that they had not yet reinstated any of the striking miners. The next instance when he sought employment with the respondent was in December 1936. In response to his query concerning a job Bateman said "we ain't going to reinstate any of the men," and informed him that there was no use of his rustling again. Bigelow has not applied for a job with respondent since that date.

The respondent moved to dismiss the complaint as to Bigelow on the ground that he was unemployable. The record nowhere discloses that Bigelow's alleged disability was the reason for the respondent's failure to reinstate him, or indeed, that the respondent was even aware of this alleged disability prior to the hearing.

The respondent also moved to dismiss the complaint as to Bigelow on the ground that he was not a member of the Union at the time he joined the strikers. This contention is without merit for the reasons heretofore stated in our consideration of the case of Wynn.

Upon the basis of all the evidence, we find that the respondent denied reinstatement to Bigelow because he struck and engaged in concerted activities in behalf of the Union.

A resume of the work on which Bigelow was employed since the cessation of the strike follows: He worked on relief for several months and also worked on several odd jobs. He obtained employment for about a month as a laborer on a construction gang. He then got a job in a gold mine in California which he left at the end of two months because of a disagreement over a contract with the company. In February 1937 he returned to Bisbee and was employed as a cager and shaftman in a lessor's mine. After about 4 months he was laid off. At the time of the hearing Bigelow was employed at a hardware store. In the 3 months prior to the hearing he did not average over \$20 per week in

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wages, although he earned a considerably larger amount in the period before that.

About 7 or 8 months before the hearing Bigelow sought employment at the Shattuck Denn Mining Company. He was rejected, however, on the ground that the medical examination disclosed that he was afflicted with silicosis. About 5 months before the hearing he was again examined with the same result on the medical examination. His application was again rejected by the Shattuck Denn Mining Company on the ground that he could not pass the medical examination. Bigelow declared, however, that he would like to go back to work under ground again.

The respondent claims that Bigelow has obtained regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Bigelow has not secured regular and substantially equivalent employment.

J. M. MORRIS, a member of the Union, was employed 5 years by the Calumet & Arizona Mining Company prior to the merger. After the merger he was transferred to the pay roll of the respondent and worked steadily until he went out on strike on June 10, 1935. At the time of the strike he was working as a powderman, earning \$5 per day. He served on the picket line every day for about 2 weeks after the commencement of the strike. The only time that Morris applied for work with the respondent after the cessation of the strike was about October 1, 1935. Bateman questioned him as to when he had previously worked for the Company and after obtaining the information told him that there was "nothing doing."

The respondent moved to dismiss the complaint as to Morris on the ground that he was unemployable. The record nowhere discloses that Morris' alleged disability was the reason for the respondent's failure to reinstate him, or indeed, that the respondent was even aware of this alleged disability prior to the hearing.



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Upon the basis of all the evidence, we find that the respondent denied reinstatement to Morris because he struck and engaged in concerted activities in behalf of the Union.

Since the termination of the strike, other than relief work, Morris has had only temporary jobs. A little more than a year prior to the hearing he applied for a job with the Shattuck Denn Mining Company but his application was rejected on the ground that he did not pass the medical examination. He feels, however, that his physical condition is adequate for work under ground. Although he was denied employment by the Shattuck Denn Mining Company on the ground that he could not satisfactorily pass the medical examination to which they subjected him, there is no evidence upon which we can base a conclusion that Morris would have been unable satisfactorily to meet the physical requirements laid down by the respondent.

We find that Morris has not secured regular and substantially equivalent employment.<sup>25</sup>

H. D. Edge, a member of the Union was employed as a mucker by the respondent in January 1924, and worked continuously until he went out on strike on June 10, 1935. At the time of the strike he was working as a miner, earning \$5 per day. He served on the picket line. He did not apply for a job with the respondent until October 1937 because he thought that it would be useless. Several of the other persons out on strike had, to his knowledge, applied for employment and they had been unsuccessful. On that occasion Berlendis, the employment agent who replaced Bateman, informed him that he was not employing anybody at that time.

The respondent moved to dismiss the complaint as to Edge on the ground that he was unemployable. The record nowhere discloses that Edge's alleged disability was the

(25) In its brief the respondent states that it does not contend that Morris has obtained substantially equivalent employment.

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reason for the respondent's failure to reinstate him, or indeed, that the respondent was even aware of this alleged disability prior to the hearing.

Upon the basis of all the evidence, we find that the respondent denied reinstatement to H. D. Edge because he struck and engaged in concerted activities in behalf of the Union.

At the time of the hearing Edge was employed on relief work. Other employment which Edge had after the strike includes approximately 5 weeks' work for a stone company in April 1936. After that he obtained a job as a miner with the Molybdenum Company in Climax, Colorado. After he worked there 10 days he left that job and went into Idaho. In July 1936 his application for a job with the Sunshine Mining Company at Kellogg, Idaho, was rejected on the ground that the doctor's examination revealed that he was afflicted with silicosis. In October 1936 he was employed as a miner by a lessor in the Bisbee district. He worked continuously for the lessor until April 1937 when he was injured. He returned to work for the lessor for a few days and then was laid off. He is of the opinion that he is physically able to do the work required of a miner.

The respondent claims that H. D. Edge has secured regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Edge has not secured regular and substantially equivalent employment.

HENRY WATERS, a member of the Union, was first employed by the respondent in 1927. He worked intermittently for the respondent until he was laid off in 1931 because of a reduction in force. In January 1934 he was reemployed by the respondent and worked steadily until he went out on strike on June 10, 1935. At the time of the strike he was employed as a miner earning \$5 per day. He served on the picket line. He did not apply for a job with the respondent until December 1936 because he knew of other men in a

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position similar to his whose applications had been rejected by the respondent. In December 1936, however, he asked Bateman for a job. Bateman replied that he could not do anything for him and said, "you just as well go to a union camp." That was the last time that he applied for a job with the respondent.

The respondent moved to dismiss the complaint as to Waters on the ground that he was unemployable. The record nowhere discloses that Waters' alleged disability was the reason for the respondent's failure to reinstate him, or indeed, that the respondent was even aware of this alleged disability prior to the hearing.

Upon the basis of all the evidence, we find that the respondent denied reinstatement to Waters because he struck and engaged in concerted activities in behalf of the Union.

Since he went out on strike on June 10, 1935, Waters has had no employment other than relief work. He endeavored to get a job at the Shattuck Denn Mining Company in 1937 but was rejected on the ground that he was afflicted with silicosis. Waters is of the opinion that his physical condition would not permit him to work at an inside job at mining.

We find that Waters has not secured regular and substantially equivalent employment.

GROVER CORNETT, a member of the Union, was employed by the respondent in 1929 and was laid off in 1930 when its force was reduced. He was reemployed by the respondent on June 7, 1935, to commence work on June 10, 1935. Instead of going to work on June 10, however, he went out on strike. Since he had been hired to commence work on June 10, we find that he was an employee of the respondent on that date. The fact that he joined in the strike instead of going to work can have no effect on his status as an employee. His employment card lists him as being hired to



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fill the job of a mucker. He frequently served on the picket line until about a week before the strike ceased. About a week after the strike was over he asked Bateman for a job and was told there was no chance at all of his getting his job back. Apparently that is the only occasion upon which he sought employment from the respondent.

Upon the basis of all the evidence, we find that the respondent has discriminated with respect to the hire of Cornett because he engaged in concerted activities in behalf of the Union.

At the time of the hearing he was employed as a tool nipper at the Shattuck Denn Mining Company and was earning \$5.48 per day. He obtained that job in May 1936 and has worked there continuously since that time. Prior to obtaining that job he had no employment other than relief work since June 1935.

The respondent claims that Cornett has secured regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Cornett has not secured regular and substantially equivalent employment.

LEONARD GUESS, a member of the Union, was employed by the Calumet & Arizona Mining Company for 4½ years prior to its merger with the respondent. After the merger he was transferred to the pay roll of the respondent and continued to work steadily thereafter until January 14, 1935. At the time he ceased to be in the employ of the respondent he was listed as a motorman on his employment record. He left the employ of the respondent to go into the restaurant business which, however, failed after about a month. He did not serve on the picket line during the course of the strike. The first time that he applied for a job with the respondent thereafter was about 2 weeks after the strike ceased. He spoke to Bateman on this occasion and Bateman told him that he would have to "look it up"

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and advised Guess to return at a later date. Four days later he reappeared and Bateman told him that he could do nothing for him because, in the words of Guess, he did not "incorporate with the company" when he had worked with them. Bateman did not enlarge upon the meaning of this statement, but Guess stated that he had a good idea of what Bateman was referring to.

In the absence of evidence that the respondent refused to hire Guess because of his union affiliation, we find that the refusal was for other reasons.

VERNON DELL CURTIS, a member of the Union, was employed by the Calumet & Arizona Mining Company for 4 years prior to the merger. After the merger he was transferred to the pay roll of the respondent and worked there continuously until June 15, 1934. At the time he was discharged he was working as a motor swamper. There is a notation on his employment record that he is a good motor swamper and mucker. About a month after he ceased to work for the respondent he sought to be reemployed but was unsuccessful. He was on the picket line all during the strike. In October or November 1935 he asked Bateman for a job and was told "There's no chance of the likes of you to get a foothold in this camp again." In the summer of 1936 he met Bateman in a public recreation parlor in Lowell and asked him concerning a job. Bateman responded "In 300 years we will give you fellows a job again."

Upon the basis of all the evidence we find that the respondent has discriminated with respect to the hire of V. D. Curtis because he engaged in concerted activities in behalf of the Union.

Other than relief work, Curtis had only temporary jobs until he was employed by the Shattuck Denn Mining Company on January 13, 1937. At the time of the hearing he was still employed with the Shattuck Denn Mining Company and was working as a powderman, earning \$5.48 per day.

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The respondent claims that Curtis has obtained regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that V. D. Curtis has not secured regular and substantially equivalent employment.

RICHARD JOHNSON has never been employed by the respondent. He testified as follows:

Q. Have you ever applied for work at Phelps Dodge Corporation? A. Yes, sir.

Q. When? A. In the months of January, February and March. Just after the strike.

Q. That would be 1956? A. '36.

Q. Any members of your family formerly employed by the Phelps Dodge Corporation? A. Yes, father and brother.

Q. To whom did you apply for work? A. Mr. Bateman.

Q. When was the first time you spoke to him?

A. In January.

Q. What did he say? A. He said, Well, my father and brother weren't in very good standing with the company and that there wouldn't be no chance.

Although Johnson persisted in his efforts to obtain a job with the respondent he was not successful. The record fails to disclose why Johnson's father and brother were in the bad graces of the respondent if in fact they were. Although there is a Merrell Johnson who is a complainant in these proceedings there is no showing that he is related to Richard Johnson.

Since there is no evidence that Richard Johnson was in fact denied employment because of his union activities or because of the union activities of his father and brother we



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find that Richard Johnson was not discriminated against in regard to hire or tenure of employment within the meaning of the Act.

On the basis of all the evidence we find that by its refusal to reinstate or reemploy Edgar Lewis Hargus, John Henry Key, George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Grover D. Windsor, Martin Vaclav, Montague Reed, Milton Wynn, Alexander Kalastro, William Henry Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Frank Peterson, Ben J. Stringer, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, Henry Waters, Vernon Dell Curtis, Grover Cornett, Herschel J. Montgomery, and William Daugherty, the respondent has discriminated with respect to their hire and tenure of employment, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

We find that the respondent has not discriminated against William Day, Levi Crandall, Richard Johnson, John Patrick Foley, and Leonard Guess in regard to hire and tenure of employment within the meaning of Section 8 (3) of the Act, and the allegations in the complaint with respect to them will, therefore, be dismissed.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic,

and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### The Remedy

Having found that the respondent has engaged in unfair labor practices, we will order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act and to restore as nearly as possible the condition which existed prior to the commission of the unfair labor practices.

We have found that the respondent has discriminated in regard to the hire and tenure of employment of certain individuals named above. In accordance with our usual practice we shall order the reinstatement or the reemployment of such individuals. The respondent contends that the Board lacks power to order the reinstatement of any striker who has obtained other regular and substantially equivalent employment. We have found above that none of the strikers discriminated against has obtained other regular and substantially equivalent employment within the meaning of the Act. Nevertheless, even if any striker had obtained such employment we would, for the reasons set forth in *Matter of Eagle-Picher Mining and Smelting Company, a corporation, and Eagle-Picher Lead Company, a corporation and International Union of Mine, Mill and Smelter Workers Locals Nos. 15, 17, 107, 108, and 111*, still order his reinstatement by the respondent.<sup>36</sup> The respondent also contends that the Board lacks power to reinstate or require the employment of individuals who were not employees within the meaning of the Act at the time the discrimination against them occurred. We do not agree with this contention. For the reasons set forth in *Matter of Waumbeec Mills and United Textile Workers of America*, we are of the opinion that the Board is empowered under Section 10 (c) of the Act to require the employment with back

*Decision and Order.*

pay of individuals who were not employees of the respondent but who were discriminatorily denied employment contrary to Section 8 (3) of the Act.<sup>37</sup>

The respondent urges that the reinstatement of the above-mentioned persons would lead to or tend to lead to a labor dispute. Five of the respondent's employees testified to the effect that they would refuse to work with any man who was on the picket line. At the hearing counsel for the respondent and counsel for the Board entered into the following oral stipulation:

\* \* \* for the purpose of avoiding more or less repetition of testimony, that we [respondent] would proceed, if necessary, to put on testimony of some seven or eight hundred men now employed by the Phelps Dodge Corporation substantially to the effect of the testimony given by the witnesses called since the noon recess [5 witnesses referred to above]. That would be to the general effect that they do not want to work with these men who went out on the strike in June 1935, or were on the picket line, because of the abuse, threats, and general ill feeling that was engendered at that time, and because they do not feel it either safe or desirable to work with them in the occupations in which they were engaged.

In some cases for the further reason that they do not feel that they would be able to cooperate with them on the job, obtain the necessary cooperation which is required underground where men are working together; and further, that that expresses the attitude generally of the men in the employ of the

(37) See *Matter of Waukegan Mills, Inc. and United Textile Workers of America*, 15 N. L. R. B., No. 4, where we held an order, requiring the employment with back pay of persons who were not employees of the respondent but who were discriminatorily denied employment by the respondent within the meaning of Section 8 (3) of the Act, to be within the authority granted to the Board by Section 10 (c) of the Act which expressly permits the Board to require upon a finding of unfair labor practices "... such affirmative action as will effectuate the policies of the Act."



*Decision and Order.*

Phelps Dodge Corporation at the present time, that they have not requested the management to reinstate any of these men or employ them, and are not desirous that they do be employed.

We cannot but consider the difficulties of adjustment envisaged in the foregoing testimony as conjectural and insubstantial, especially in view of the lapse of time since the strike. However, even assuming that the asserted resentment of non-strikers towards strikers and picketers persists, the effectuation of the policies of the Act patently requires the restoration of the strikers and picketers to their *status quo* before the discrimination against them.

The respondent contends that Clyde Bigelow, H. D. Edge, and J. M. Morris should not be reinstated because they are unemployable. This position is predicated upon evidence adduced at the hearing that they were rejected for jobs at other mining companies on the ground that they could not pass the physical examination. Their failure to pass physical examinations to which they were subjected by other mining companies obviously does not establish that they could not satisfactorily meet the respondent's physical requirements. Accordingly, we see no valid reason for refusing, in the exercise of our discretion, to restore them to their *status quo* before the unlawful discrimination against them.

We shall therefore order the respondent to offer to all the above-mentioned persons, except Henry Waters,<sup>38</sup> immediate and full reinstatement to their former or substantially equivalent positions<sup>39</sup> without prejudice to their seniority or other rights and privileges.

(38) Henry Waters did not desire reinstatement because of his physical condition.

(39) Vernon Dell Curtis and William Daugherty were not working for the respondent on June 10, 1935, the date of the strike, but each had worked for the respondent in the past. Our Order directs their reinstatement to the positions last held or to a substantially equivalent position.

*Decision and Order.*

Such reinstatement shall be effected in the following manner: All employees hired after August 9, 1935,<sup>40</sup> shall, if necessary to provide employment to the persons to be offered reinstatement, be dismissed. If thereupon, by reason of a reduction of force since the date of the hearing<sup>41</sup> there is not sufficient employment immediately available for the remaining employees, including those to be offered reinstatement, all available positions shall be distributed among such remaining employees in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities, following a system of seniority to such extent as has heretofore been applied in the conduct of the respondent's business. Those employees remaining after such distribution for whom no employment is immediately available shall be placed upon a preferential list prepared in accordance with the principles set forth in the previous sentence, and shall thereafter, in accordance with such list, be offered employment in their former or substantially equivalent positions, as such employment becomes available and before other persons are hired for such work.

We shall order the respondent to make the above-named persons, with the exception of Henry Waters, Vernon Dell Curtis, Grover Cornett, and William Daugherty, whole for any loss of pay they have suffered by reason of the respondent's discriminatory failure to hire them by January 1, 1936,<sup>42</sup> by payment to each of them of a sum equal to the

(40) The strikers made their first mass application for reinstatement on that date. With respect to Vernon Dell Curtis and William Daugherty, the date governing the dismissals to be effected will be the date from which their respective awards of back pay runs, which is discussed *infra*.

(41) The figures furnished by the respondent show that there was no reduction of force prior to the date of the hearing.

(42) Since it is impossible to ascertain the order in which the respondent would have reinstated the strikers if it had not discriminated against them, we shall fix a date marking the end of a period within which the respondent could reasonably have put all of them back to work. As we have found the evidence discloses that between August 9, 1935, and January 1, 1936, the respondent hired approximately 156 persons. Of this group approximately 116 were muckers and 40 were miners. By January 1, 1936, therefore, the respondent could have returned to work all of the strikers whom it discriminatorily failed to reinstate. Accordingly, back pay will be allowed from that date.

*Decision and Order.*

amount he normally would have earned as wages from January 1, 1936, to the date of the offer of reinstatement, less his net earnings<sup>43</sup> during said period, deducting, however, from the amount otherwise due to each of the said employees, monies received by said employee during said period for work performed upon Federal, State, county, municipal or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said relief projects.<sup>44</sup>

With respect to Henry Waters, we have found that he was afflicted with defective lungs to such an extent as to prevent his employment underground. The record simply establishes this condition as existing in 1937. In view of the vagueness of the date we shall presume that Waters' physical condition rendered him unfit for underground work on January 1, 1937. We shall order the respondent to make him whole for any loss of pay which he suffered by reason of the respondent's discriminatory failure to reinstate him by January 1, 1936, by payment to him of a sum equal to the amount he normally would have earned as wages from January 1, 1936 to January 1, 1937, less his net earnings and with similar deductions as described in the preceding paragraph.

With respect to Vernon Dell Curtis and Grover Cornett, we shall order their back pay computed from January 1, 1936<sup>45</sup> to the date of the offer of reinstatement but to exclude

(43) By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union*, Local No. 2590, 8 N. L. R. B., No. 51. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects are not considered as earnings but, as provided below in the Order, shall be deducted from the sum due the employee, and the amount thereof shall be paid over to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects.

(44) *Republic Steel Corporation v. National Labor Relations Board and Steel Workers Organizing Committee* (C. C. A. 3, decided November 8, 1939).

(45) Each of these men had made individual application for reinstatement prior to that date. See Section III B *supra*.



*Decision and Order.*

the period from March 16, 1938, the date of the Trial Examiner's Intermediate Report in which he recommended dismissal of the complaint as to these two persons, to the date of the Order herein. This is in accordance with our rule that the respondent could not have been expected to offer jobs to persons after it received the Intermediate Report recommending the dismissal of the complaint as to these persons.<sup>46</sup>

With respect to William Daugherty, in view of the fact that he was not working for the respondent at the time of the strike we shall order the respondent to make him whole for any loss of pay which he suffered by reason of the respondent's discriminatory failure to hire him by January 30, 1937,<sup>47</sup> by payment to him of a sum equal to the amount he normally would have earned as wages from that date to the date of the offer of reinstatement as computed above. We shall also order his back pay to exclude the period from March 16, 1938, to the date of the Order herein for the same reason as set forth above in the cases of V. D. Curtis and Cornett.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

*CONCLUSIONS OF LAW.*

1. International Union of Mine, Mill and Smelter Workers Local No. 30 is a labor organization within the meaning of Section 2 (5) of the Act.
2. By discriminating in regard to the hire and tenure of employment of Edgar Lewis Hargus, John Henry Key,

(46) *Matter of E. R. Haffelfinger Company Inc. and United Wall Paper Crafts of North America, Local No. 6*, 1 N. L. R. B. 760; *Matter of Kentucky Firebrick Company and United Brick and Clay Workers of America, Local Union No. 510*, 3 N. L. R. B. 455; order enforced in *National Labor Relations Board v. Kentucky Firebrick Company*, 99 F. (2d) 89 (C. C. A. 6).

(47) Daugherty made an individual application for employment on January 15, 1937. The record shows that 16 miners and 5 muckers who had not theretofore worked for the respondent were hired between January 15, 1937, and January 30, 1937. Accordingly, we will award Daugherty back pay from January 30, 1937, by which date he could have been reinstated if the respondent had not discriminated against him.

*Decision and Order.*

George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Grover D. Windsor, Martin Vaclav, Montague Reed, Milton Wynn, Alexander Kalastro, William Henry Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Frank Peterson, Ben H. Stringer, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, Henry Waters, Vernon Dell Curtis, Grover Cornett, William Daugherty and Herschel Montgomery, and thereby discouraging membership in the Union, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

5. By failing to employ William M. Day, Levi Crandall, Richard Johnson, John Patrick Foley, and Leonard Guess, the respondent has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

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*ORDER.*

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Phelps Dodge Corporation, and its officers, agents, successors, and assigns shall:

*Decision and Order.*

## 1. Cease and desist from:

(a) Discouraging membership in International Union of Mine, Mill and Smelter Workers Local No. 30, or any other labor organization of its employees, by discriminating in regard to hire or tenure of employment or any terms or conditions of employment.

(b) In any other manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

## 2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to the following persons immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, dismissing if necessary all employees hired since the dates indicated, in the manner set forth in the section entitled "Remedy," above, and place those for whom employment is not immediately available upon a preferential list and offer them employment as it becomes available, in the manner set forth in said section: Edgar Lewis Hargus, John Henry Key, George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Grover D. Windsor, Martin Vaclav, Montague Reed, Milton Wynn, Alexander Kalastro, William Henry Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Frank Peterson, Ben H. Stringer, George C. Rohrer,



*Decision and Order.*

Clyde Bigelow, J. M. Morris, H. D. Edge, Vernon Dell Curtis, Grover Cornett, William Daugherty, and Herschel Montgomery.

(b) Make whole Edgar Lewis Hargus, John Henry Key, George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Grover D. Windsor, Martin Vaclav, Montague Reed, Milton Wynn, Alexander Kastro, William Henry Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Frank Peterson, Ben H. Stringer, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, and Herschel Montgomery for any loss of pay they may have suffered by reason of the respondent's discriminatory refusal to reinstate them, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from January 1, 1936, to the date of the offer of reinstatement or placement upon a preferential list, less the net earnings of each during said period; deducting, however, from the amount otherwise due each of said employees, monies received by said employees during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(c) Make whole Henry Waters for any loss of pay he may have suffered by reason of respondent's discriminatory refusal to reinstate him, by payment to him of a sum of money equal to that which he normally would have earned as wages from January 1, 1936, to January 1, 1937, less his net earnings during said period, deducting, however, from

*Decision and Order.*

the amount otherwise due him, monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(d) Make whole Vernon Dell Curtis and Grover Cornett for any loss of pay they may have suffered by respondent's discriminatory refusal to reinstate them, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from January 1, 1936, to March 16, 1938, and from the date of the service of this Order to the date of offer of reinstatement or placement upon a preferential list, less the net earnings of each during the said periods, deducting, however, from the amount otherwise due to each of said employees, monies received by said employees during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(e) Make whole William Daugherty for any loss of pay he may have suffered by respondent's discriminatory refusal to reinstate him, by payment to him of a sum of money equal to that he would normally have earned as wages from January 15, 1937, to March 16, 1938, and from the date of the service of this Order to the date of reinstatement or placement upon a preferential list, less his net earnings during said periods; deducting, however, from the amount otherwise due him, monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other

*Decision and Order.*

government or governments which supplied the funds for said work-relief projects;

(f) Post immediately in conspicuous places throughout its mines at Bisbee, Arizona, and maintain for a period of at least sixty (60) consecutive days notices stating that the respondent will cease and desist in the manner set forth in 1 (a) and (b); that it will take the affirmative action in 2 (a), (b), (c), (d), and (e) of this Order; and that the respondent's employees are free to become or remain members of International Union of Mine, Mill and Smelter Workers Local No. 30, and that the respondent will not discriminate against any employee because of membership or activity in that organization;

(g) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

It is further ordered that the complaint, as amended, be, and it hereby is, dismissed in so far as it alleges that the respondent discriminated in regard to the hire and tenure of employment of William M. Day, Levi Crandall, Richard Johnson, John Patrick Foley, and Leonard Guess.

Signed at Washington, D. C., this 16th day of January, 1940.

J. WARREN MADDEN,  
J. WARREN MADDEN,  
Chairman.

EDWIN S. SMITH,  
EDWIN S. SMITH,  
Member.

WM. M. LEISERSON,  
WM. M. LEISERSON,  
Member.

(SEAL)

NATIONAL LABOR RELATIONS BOARD



IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT

<p style="text-align: center;"><b>PHELPS DODGE CORPORATION,</b> <b>Petitioner,</b></p> <p style="text-align: center;">v.</p> <p style="text-align: center;"><b>NATIONAL LABOR RELATIONS BOARD,</b> <b>Respondent.</b></p>	}	No.
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**Stipulation.**

IT IS HEREBY STIPULATED by and between Phelps Dodge Corporation, petitioner, and the National Labor Relations Board, respondent, by their respective attorneys, that in printing the transcript of the record herein none of the exhibits introduced at the hearing before the Board shall be printed except as follows:

1. Board Exhibit No. 1, omitting, however, the National Labor Relations Board Rules and Regulations—Series 1, as amended; all affidavits of service and return receipts; order granting extension of time within which to answer, dated January 19, 1938; and order designating Trial Examiner, dated January 25, 1938.

2. Board Exhibits Nos. 5, 24, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, and 67.

3. Board Exhibits Nos. 8, 10, 13 to 23, inclusive, 25 to 49, inclusive, and 51 to 56, inclusive, omitting, however, in each case the bottom half of the front side headed "Record of Absence," and omitting also the entire rear side.

*Stipulation.*

4. Unnumbered supplemental stipulation filed with the Regional Director February 17, 1938; and unnumbered stipulation on pay-roll data, dated January 11, 1939, with exhibits thereto annexed.

IT IS FURTHER STIPULATED that those exhibits not printed shall be deemed part of the record before the Court, and may be considered by the Court and referred to by the parties; and that either party shall have the right to have any of said exhibits printed and included in the printed record in the event that appeal is later taken.

PHELPS DODGE CORPORATION  
By DENISON KITCHEL  
WM. E. STEVENSON  
Its Attorneys.

Dated at New York, N. Y.  
March 29, 1940.

NATIONAL LABOR RELATIONS BOARD  
By ROBERT B. WATTS  
Associate General Counsel.

Dated at Washington, D. C.,  
March 30, 1940.

IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT

PHELPS DODGE CORPORATION,  
Petitioner,  
v.  
NATIONAL LABOR RELATIONS BOARD,  
Respondent.

Order.

Upon stipulation of the parties and due consideration having been given

IT IS HEREBY ORDERED THAT in printing the transcript of the record herein none of the exhibits introduced at the hearing before the Board shall be printed except as follows:

1. Board Exhibit No. 1, omitting, however, the National Labor Relations Board Rules and Regulations—Series 1, as amended; all affidavits of service and return receipts; order granting extension of time within which to answer, dated January 19, 1938; and order designating Trial Examiner, dated January 25, 1938.
2. Board Exhibits Nos. 5, 24, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, and 67.
3. Board Exhibits Nos. 8, 10, 13, to 23 inclusive, 25 to 49, inclusive, and 51 to 56, inclusive, omitting, however, in each case the bottom half of the front side headed "Record of Absence," and omitting also the entire rear side.



## ORDER

4. Unnumbered supplemental stipulation filed with the Regional Director February 17, 1938; and unnumbered stipulation on pay-roll data, dated January 11, 1939, with exhibits thereto annexed.

It is further ordered that those exhibits not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties; and that either party shall have the right to have any of said exhibits printed and included in the printed record in the event that appeal is later taken.

Learned Hand, Judge, United States Circuit Court of Appeals for the Second Circuit.

Dated April 1, 1940.

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND  
CIRCUIT, OCTOBER TERM, 1939

No. 350

(Argued June 4, 1940. Decided July 11, 1940)

PHHELPS DODGE CORPORATION, Petitioner,  
against

NATIONAL LABOR RELATIONS BOARD, Respondent

Petition to review an order of the National Labor Relations Board and request by the Board for modification and enforcement of the order. Enforcement granted in part.

Before L. Hand, Chase and Patterson, Circuit Judges

Ellinwood & Ross; Debevoise, Stevenson, Plimpton & Page, Attorneys for Petitioner.

Denison Kitchel, William E. Stevenson, of Counsel.

Charles Fahy, General Counsel; Robert B. Watts, Associate General Counsel; Laurence A. Knapp, Assistant General Counsel; Alvin J. Rockwell, Mortimer B. Wolf, Morris P. Glushien, Attorneys for Respondent.

CHASE, Circuit Judge:


This case is before us on the petition of the Phelps Dodge Corporation, a New York corporation doing business in the Southern District of New York, with its principal office in the City of New York, for the review of an order of the National Labor Relations Board requiring the reinstatement of striking employees and two others with back pay. It involves questions as to the scope of the term "employee" within the meaning of the National Labor Relations Act, 49 Stat. 449; 29 U. S. C. A. Secs. 151 et seq., of which some have already been considered by this court in *National Labor Relations Board v. National Casket Co.*, 107 F. (2) 992.

The Board answered the petition and requested the enforcement of the order with the sole modification that the language of the notice to be posted by the petitioner to the effect that it will cease and desist from conduct prohibited be in accord with the more recent practice of the Board in that respect following the decision *Art Metal Construction Co. v. National Labor Relations Board*, 110 F. (2) 148. The proposed modification is that the notices state that petitioner "will not engage in conduct from which it is ordered to cease and desist in paragraph (a) and (b) of this Order \* \* \*". This modification is now ordered as requested.

Both our jurisdiction which is based upon Sec. 10 (e) of the above Act and the interstate character of the business of the petitioner are clearly established and unquestioned.

The unfair labor practices found by the Board were based on charges filed by the International Union of Mine, Mill and Smelter Workers, Local No. 30 and were proved to have occurred at a copper mine owned and operated by the petitioner at Bisbee, Arizona, in the summer of 1935. They consisted of refusals, because of their union affiliations or activities, to hire applicants for employment and to reinstate employees who had engaged in a strike. The Board found that the petitioner had violated Sec. 8 (1) and (3) of the Act in one or the other of these respects by discriminating against forty named men; dismissed the allegations as to five men; and ordered the petitioner to offer employment with back pay to thirty-nine of the forty together with back pay to the remaining one up to a time when he became unemployable. As the trial examiner had recommended dismissal of the complaint as to three of the men the Board ordered reinstated, no back pay was allowed them between

the date of the intermediate report of the examiner and the date of the order of the Board.

The findings that are supported by substantial evidence show the petitioner's mine at Bisbee, known as the Copper Queen Mine, was an "open-shop camp" until the Union began its attempt at organization there in September 1933. This attempt was resisted by the petitioner but the union by June 10, 1935 had a membership sufficiently large to be reckoned with, though still a small minority of the approximately 950 employees the petitioner had at work at the mine. On June 6, 1935 the petitioner discharged eight of these union men. The following evening the union voted to strike on June 10th because of such discharges and on the last mentioned date about ten per cent of the petitioner's employees stopped work and established picket lines at mine entrances. Picket lines were maintained until Aug. 24, 1935 when the strike was terminated by the union because of its failure and the picketing was discontinued. 

The Board found that by June 28th the petitioner had succeeded in filling the places of all the strikers and had resumed normal operations at the mine. After that and at times before and after the strike was given up by the union on Aug. 24th, the petitioner increased the number of its employees but in doing so consistently refused to reinstate any of the strikers though they applied for reinstatement in August when the petitioner was hiring men for work similar to that for which they applied and the refusal of employment was clearly because of their union membership and activities.

After the labor trouble in June 1935 above referred to, the National Labor Relations Act became effective on July 5, 1935 but this was after the date on which the Board had found that the mine had resumed normal operations with the places of the strikers taken by other employees. From this it is argued by the petitioner that there was no current labor dispute when the Act became effective on July 5th, and consequently that its subsequent refusal to reinstate any of the strikers because they were union men was not unlawful since they were not employees within the meaning of the Act.

Though the union had, before the effective date of the Act, apparently been shown to be too weak to win the strike or even to disrupt seriously the working of the mine, we think it clear that a labor dispute still existed which was then



"current" as the Board found. That was a question of fact which we can review only to the extent of determining whether or not there was substantial evidence to support it. That there was such evidence is shown by the proof of the maintenance of the picket lines coupled with several acknowledgments by the petitioner itself after July 5th that it recognized the continued existence of the strike. Reliance is placed by the petitioner upon decisions to the effect that a strike cannot exist unless the employer has notice of definite demands to be met and given an opportunity to meet them but none of them dealt with what is a current labor dispute within the meaning of the statute controlling here and, while interesting, are presently of little help. Nor is it decisive that normal production in the mine had been attained though in *Quinlivan v. Dail-Overland Co.*, 274 Fed. 56 it was, indeed, held in deciding a controversy involving the Clayton Act that strikers ceased to be employees after the employer had its plant in full production even though such strikers continued their efforts to maintain the strike. The definition of employee in the National Labor Relations Act is very broad and should not be narrowed to make abortive the remedial purposes of the statute. It includes "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment." Had the Act been effective when the strike began in June there would, of course, be no question about the retention by the strikers of their status, under the statute, as employees. The sufficiently supported finding of the Board, however, carries the labor dispute into July 5th and that is enough to make the strikers employees within the meaning of the Act when they were refused reinstatement. *Jefferey-DeWitt Insulator Co. v. National Labor Relations Board*, 91 F. (2) 134; *Standard Lime & Stone Co. v. National Labor Relations Board*, 97 F. (2) 531. See also, *National Labor Relations Board v. National Casket Co.*, 107 F. (2) 992, 996. The question of whether there was a current labor dispute after the mine resumed normal operations with the strikers' places filled should not be confused with whether or not it would have been an unfair labor practice to refuse to re-employ the strikers after normal operations had been resumed, on the ground that that would have made necessary the discharge of the

men who had taken their places. As to whether or not an employer may lawfully refuse re-employment for that reason, see *Labor Board v. Columbian Co.*, 306 U. S. 292 and *Labor Board v. Mackay Co.*, 304 U. S. 333.

Some of the strikers, who were ordered reinstated, did obtain employment. Part of them were employed by the Shattuck Denn Mining Company which operated a similar mine in Bisbee only a short distance from the mine of the petitioner. They secured work of a similar nature under similar conditions at similar rates of pay; in some instances at higher wages. Though the Shattuck Denn Mining Company was smaller than the petitioner it was shown to be a steady employer of this kind of labor. There may have been some loss of seniority rights but that would doubtless often be a result of a change in employment and what that loss may have been was not adequately shown. Unless it was a substantial loss, the Board's decision to the effect that those men who were employed by the Shattuck Denn Mining Company did not at the time they went to work there obtain substantially equivalent employment cannot stand and they then ceased to be employees subject to reinstatement. *Mooreville Cotton Mills v. National Labor Relations Board*, 94 F. (2) 61; *National Labor Relations Board v. Carlisle Lumber Co.*, 99 F. (2) 533. In order that this question of fact may be determined, there will be a remand to the Board for further findings upon such evidence as the parties may present.

The strikers did, in any event, lose some time because of the unfair labor practice of the petitioner in refusing to re-instate them while they were employees. It is true that the language of the Act couples reinstatement and back pay in such a way that it has been held that the latter cannot be ordered by the Board unless reinstatement is also. *National Labor Relations Board v. Carlisle Lumber Co.*, supra. But that seems to diminish unduly the scope of the Board's broad power to take some of the economic pinch out of labor troubles. We think the Act authorizes the Board to relieve an employee from loss of pay during the time an unfair labor practice has been the cause of the loss and during which it is a sufficient reason for his then reinstatement whether he may be reinstated as of the time the order is made or not. *Mooreville Cotton Mills v. National Labor Relations Board*, supra.

The findings of the Board to the effect that the strikers who obtained employment other than from the Shattuck Denn Mining Company did not obtain substantially equivalent pay is supported by the evidence and the order for their reinstatement with back pay is, accordingly, upheld except in respect to the amount of back pay awarded to those who elsewhere obtained employment, not substantially equivalent, and then voluntarily relinquished that. There is no reason to suppose that Congress intended to have those who had unlawfully been deprived of their jobs maintained in idleness beyond the period when they had an opportunity to do work they were fitted to perform. They were bound to use reasonable efforts to find work and to keep employed. It is only to the extent that their earnings were diminished after they made such efforts that they are entitled to be made whole. The same rule that applies to a discharged employee who sues for a breach of contract is applicable to them. Accordingly, the amount allowed each such employee should be the difference between his actual earnings plus what he failed without excuse to earn and the amount he would have earned but for the unfair labor practices of the petitioner.

We have included among those called strikers a man named Cornett who had not worked for the petitioner for several years before the strike but who was employed on June 7, 1935, to begin work on June 10th, the day the strike began. He failed to report for work on that day and joined the picket line on the following day. It is contended that he was not an employee but we can find no substance in that argument. He was admittedly hired. That contract fixed his relationship to the petitioner regardless of whether or not he actually worked before he joined the strikers.

There were two men ordered reinstated who were not employees within our decision in *National Labor Relations Board v. National Casket Co.*, supra. They are Daugherty who left the employ of the petitioner on Oct. 15, 1934; who never thereafter was employed by the petitioner; and who was refused employment on Jan. 15, 1937, because of his union affiliations. Another was Curtis who was discharged by the petitioner on June 15, 1934, and who, because of his union membership, was refused re-employment in 1935 after the Act became effective. For the reasons stated in the case last above mentioned we hold that these two men were not



employees and that the Board was without power to order the petitioner to offer them employment.

Though there was considerable delay both in filing the charges with the Board and in proceedings thereafter to the final order to all of which the petitioner has called out attention, we are not prepared to say on this record that it has a just grievance on that score.

One further modification of the order is, however, required. The Board ordered the petitioner to deduct from the amount otherwise due each employee awarded back pay whatever had been received during the period "for work performed upon Federal, State, county, municipal, or other work relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which applied for said work-relief projects." This part of the order went beyond the power of the Board and should be omitted. *National Labor Relations Board v. Leviton Manufacturing Co. Inc.*, 111 F. (2) — (C. C. A. 2) decided April 29, 1940.

The order of the Board is modified in accordance with this opinion and, as so modified, the motion for an enforcement order is granted.

L. HAND, C. J. (Concurring):

I agree that the men who were on strike on July 5, 1935, were entitled to reinstatement, though not because the dispute which caused them to quit their jobs, was "current" when the act took effect. If I were free to decide, I should hold that it was an "unfair labor practice" to discriminate against anyone, whether an "employee", or not. Section eight has five subdivisions and two of them—two and three—do not use the word. Moreover, not only does the text for that reason not require that these subdivisions shall be limited to employees, but the predominant purpose of the act as a whole requires an opposite construction. One can as effectively interfere with the rights which § 7 secured by refusing to hire as by discharging; that is, unless we interpret "employees" in § 7, as limited to persons actually employed at the moment, which would certainly mutilate the act. Nor am I moved by the argument that the employer must be free to hire whom he will. The whole purpose is to limit his liberty so far as its exercise may invade the new rights created; and I can see no greater limita-

tion in denying him the power to discriminate in hiring, than in discharging. Except for National Labor Relations Board v. National Casket Company, 107 Fed. (2) 992 (C. C. A. 2), I should therefore have sustained the order, not only as to those on strike when the "unfair labor practice" occurred, but as to the two who were not on any theory "employees" at that time. But, having taken part in that decision and my motions being then overruled, I regard it as authoritative. It is another question whether anyone who is not an "employee", is entitled to reinstatement, but that I pass, because it does not arise if it was not an "unfair labor practice" to discriminate against the two men in question.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
SECOND CIRCUIT, OCTOBER TERM, 1939

No. 350

PHELPS DODGE CORPORATION, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

Order on Petition of Phelps Dodge Corporation to Review and Set Aside an Order of the National Labor Relations Board, and on Request of Board for Enforcement of its Order.

July —, 1940

Before L. Hand, Chase, and Patterson, Circuit Judges

The Phelps Dodge Corporation having petitioned this Court to review and set aside an order of the National Labor Relations Board entered January 16, 1940, the National Labor Relations Board having requested the enforcement of its order, and this Court on July 11, 1940, having filed its opinion modifying the order of the Board in certain respects and, as so modified, granting the Board's request for the enforcement of said order;

It Is Hereby Ordered that Phelps Dodge Corporation, petitioner herein, and its officers, agents, successors and assigns, shall cease and desist from:

(a) Discouraging membership in International Union of Mine, Mill and Smelter Workers Local No. 30, or any other

labor organization of its employees, by discriminating in regard to hire or tenure of employment or any terms or conditions of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act;

It Is Further Ordered that Phelps Dodge Corporation, and its officers, agents, successors and assigns, shall:

(a) Offer to the following persons immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, dismissing if necessary all employees hired since August 9, 1935, in the manner set forth in the section entitled "Remedy" appearing in the Decision and Order of the National Labor Relations Board issued on January 16, 1940, and place those for whom employment is not immediately available upon a preferential list and offer them employment as it becomes available, in the manner set forth in said section: Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Milton Wynn, George Gerhardt, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Frank Peterson, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, and Herschel Montgomery;

(b) Make whole Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Milton Wynn, George Gerhardt, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Frank Peterson, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, and Herschel Montgomery for any loss of pay they may have suffered by reason of petitioner's discriminatory refusal to reinstate them, by payment to each of them of a sum of money equal to that which he would normally have earned as wages from January 1, 1936, to the date of the offer of reinstatement or placement upon a preferential list, less his net earnings during said period, and also less the net



amount which he failed without excuse to earn during said period;

(c) Make whole Edgar Lewis Hargus, John Henry Key, George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Grover D. Windsor, Martin Vaclav, Montague Reed, Alexander Kalastro, William Henry Bigelow, William Windsor, Ellis Moran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, William Graham, Jesse Edge, Grover Cornett, and Ben H. Stringer for any loss of pay they may have suffered by reason of petitioner's discriminatory refusal to reinstate them, during the period from January 1, 1936, to the date when they secured employment at the Shattuck Denn Mining Company, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from January 1, 1936, to the date he obtained employment at the Shattuck Denn Mining Company, less his net earnings during said period, and also less the net amount which he failed without excuse to earn during said period;

(d) Make whole Henry Waters for any loss of pay he may have suffered by reason of petitioner's discriminatory refusal to reinstate him, by payment to him of a sum of money equal to that which he normally would have earned as wages from January 1, 1936, to January 1, 1937, less his net earnings during said period, and also less the net amount which he failed without excuse to earn during said period;

(e) Post immediately in conspicuous places throughout its mines at Bisbee, Arizona, and maintain for a period of at least sixty (60) consecutive days notices stating that petitioner will not engage in the conduct from which it is ordered to cease and desist by the provisions of this order of the Court and will take the affirmative action required by said order;

(f) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of the entry of this order of the Court, what steps petitioner has taken to comply herewith;

It Is Further Ordered that the complaint, as amended, be, and it hereby is, dismissed in so far as it alleges that

petitioner discriminated in regard to the hire and tenure of employment of William M. Day, Levi Crandall, Richard Johnson, John Patrick Foley, and Leonard Guess;

And It Is Further Ordered that that part of the case relating to reinstatement of, and any additional back pay to, the persons named in subparagraph (c) of the third paragraph of this order, be remanded to the National Labor Relations Board for purposes of determining whether said persons have, in obtaining employment at the Shattuck Denn Mining Company, suffered a substantial loss of seniority rights, the Board to make further findings upon such evidence as the parties may present and file with this Court its findings and recommendations in the manner provided in Section 10 (e) of the National Labor Relations Act.

Learned Hand, Judge, United States Circuit Court of Appeals for the Second Circuit.

Harrie B. Chase, Judge, United States Circuit Court of Appeals for the Second Circuit.

Robert P. Patterson, Judge, United States Circuit Court of Appeals for the Second Circuit.

Stamp on reverse side reads: United States Circuit Court of Appeals, Second Circuit, Filed Jul. 26, 1940. D. E. Roberts, Clerk.

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UNITED STATES OF AMERICA,  
Southern District of New York:

I, D. E. Roberts, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from I to XVIII and 1 to 936 inclusive, in 2 volumes, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Phelps Dodge Corporation, Petitioner, against National Labor Relations Board, Respondent, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this first day of August, in the year of our Lord one thousand nine hundred and forty, and of the Independence of the said United States the one hundred and sixty-fifth.

D. E. Roberts, Clerk. (Seal.)

## IN THE SUPREME COURT OF THE UNITED STATES

NATIONAL LABOR RELATIONS BOARD

v.

PHELPS DODGE CORPORATION

ORDER GRANTING EXTENSION OF TIME TO FILE A PETITION FOR  
WRIT OF CERTIORARI

Upon motion of counsel for the National Labor Relations Board, and good cause appearing, it is ordered that the time within which the National Labor Relations Board may file a petition for writ of certiorari herein be and it is hereby extended for a period of sixty (60) days from October 26, 1940.

Harlan F. Stone, Associate Justice of the Supreme Court of the United States.

October 18, 1940.

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SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 387

## ORDER ALLOWING CERTIORARI—Filed January 13, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Roberts took no part in the consideration and decision of this application.



SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 641

ORDER ALLOWING CERTIORARI—Filed January 13, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Roberts took no part in the consideration and decision of this application.

(2876)